# United States Court of Appeals for the Second Circuit



# APPELLANT'S APPENDIX

ONGWAL

# 75-1293

By/s

### **United States Court of Appeals**

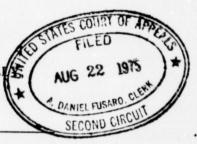
For the Second Circuit.

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

JOHN LYNCH and KENNETH MC NAL

Defendants-Respondents.



On Appeal From The inited States District Court For The Southern District Of New York

## Appellants' Appendix

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UNITED STATES ATTORNEY Southern District of New York Attorney for Plaintiff-Appellee United States Courthouse Foley Square New York, N.Y. PAGINATION AS IN ORIGINAL COPY

#### TABLE OF CONTENTS

	Page
Docket Entries	A-1
Indictment	A-3
Judgment and Probation/Commitment Order	A-5
Excerpts from Transcript of Testimony	1
Gary Andrews, for Government	1
Luther Thomas, for Government	35
Edward Jermott, for Government	66
Albert E. Fillmore, for Government	91
Kenneth S. McNally, for Defendants	106
Gerald M. Collins, for Defendants	156
Charge of the Court	176
Verdict	208

CRIMINAL DOCKET UNITED STATES DISTRICT COUDGE MAN MANUE 75 TITLE OF CASE For U. S .: THE UNITED STATES Lawrence B. Pedowitz, AUSA 791-1917 \_ KENNETH MCNALLY-153 JOHN LYNCH-1-4 For Defendant: DISB. REC COSTS PECEIPT NO. STATISTICAL RECORD (01) Clerk J.S. 2 mailed Marshal J.S. 3 mailed | J Docket fee Violation Title 18 Sec. 659,921(a)6-2+(c) Theft from interstate shipment. (Cts. 163) Possess. of firearm dur. commission of felony. (Cts264) ( Four Counts) PROCEEDINGS 3-26-75 Filed indictment. (Case referred to Judge MacMahon as superseding 75Cr 196) Trial adj'd to 4-1-75. Doft. KENNETH MONALLY REMANDED. 3-31-75 Trial beam. 4-1-75 Trial continued & concluded. Jury finds Deft McMALLY GUILTY on COURT 1., N/GUILTY b-2-75 on COUNT 3. Jury finds Deft LYNCH GUILTY on all COUNTS. Both Deft; s REMANDED. 4-3-75 Date set for sentencing 5-6-75 at 10 AM. KENNETH McNALLY- Filed Judgment & Commitment Order - The Deft is hereby committed to the custody of the Atty. General or his authorized representative for imprisonee 5-6-75 for a period of SIX (6) YEARS, on COUNT 1. -- MacKiROW, J. JOHN LYNCH- Filed Judgment & Commitment Orders The Deft is hereby committed to the custody of the Atty. General or his authorized representative for imprisonment for a period of EIGHT (8) YEARS, on each of COUNTS 1.2.3.4. to run concurrently with 5-6-75 each other .-- MacMAHON . I. (Cont'd on Page #2)

DATE	PROCEEDINGS	
5-7-75	BOTH DEPT'S = Filed Notice of Appeal to the U.S.C.A. for the 2nd Circ Judgment of Conviction entered in this action on the 69 1975. (Nailed notice to US Atty & Deft-5-9-75)	th Day of May
	Warsh 11. anril 1.2.3-1975	
New 14-75	Piled transcript of proceedings dated March 14, april 1,2,3-1975	*
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RAYMOND F. BURGHARDT, Clerk

### JULIAE WAL MAHON

74-2867

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK 75 CML 314

UNITED STATES OF AMERICA

INDICTMENT

JOHN LYNCH and KENNETH HC NALLY,

S 75 Cr.



Defendants.

The Grand Jury charges:

On or about the 26th day of June, 1974, in the Southern District of New York, JOHN LYNCH and KENNETH MC NALLY, the defendants, unlawfully, wilfully and knowingly, and with intent to convert to their own use, did embezzle, steal, take and carry away from a motor truck and trailer, bearing trailer No. 43297, owned by Liedtka Trucking Company, of 110 Patterson Avenue, Trenton, New Jersey, chattels and goods of a value more than \$100.00, which chattels and goods were moving as, and were part of and constituted an interstate shipment of freight and express from New York, New York, to Connecticut, Rhode Island, and Massachusetts.

(Title 18, United States Code, Sections 659 and 2.)

#### COUNT TWO

The Grand Jury further charges:

Om or about the 26th day of June, 1974, in the Southern District of New York, JOHN LYNCH, the defendant, did unlawfully, wilfully and knowingly carry a firearm, while committing a felony for which he may be prosecuted in a court of the United States, to wit, the felony in violation of Title 18, United States Code, Section 659 charged in the First Count of this Indictment.

(Title 18, United States Code, Sections 921(a)(2), (3) and 924(c).)

#### COUNT THREE

The Crand Jury further charges:

On or about the 6th day of September, 1974, in the Southern District of New York, JOHN LYNCH and KENNETH MC NALLY, the defendants, unlawfully, wilfully and knowingly and with intent to convert to their own use, did embezzle, steal, take and carry away from a motor truck and trailer, bearing license No. 1876TR, owned by Naps Transportation Company, Inc., 830 Washington St., New York, New York, goods and chattels of a value more than \$100.00, which goods and chattels were moving as, and were part of and constituted an interstate shipment of freight and express from New York, New York, to Elizabeth, New Jersey.

(Title 18, United States Code, Sections 659 and 2.)

#### COUNT FOUR

The Grand Jury further charges:

On or about the 6th day of September, 197- in the Southern District of New York, JOHN LYNCH, the defendant, did unlawfully, wilfully and knowingly carry a firearm, while committing a felony for which he may be prosecuted in a court of the United States, to wit, the felony in violation of Title 18, United States Code, Section 659 charged in the Third Count of this Indictment.

(Title 18, United States Code, Sections 921(a)(2),(3) and 924(c).)

Chive Ma Muchea, Ligate,

PAUL J. CURRAN United States Attorney

SIGNED BY

U.S. District Judge

Lend A. Mac Walland

MAY 8 - 1975

- 1	
	17 rdmch Andrews-direct 24
2	GARY ANDREWS, called as a
3	witness on behalf of the Government, after being
4	duly sworn, testified as follows:
5	DIRECT EXAMINATION
6	BY MR. GROSS:
7	Q Mr. Andrews, what is your occupation, sir?
8	A Truck driver.
9	Q Do you own your own trucks?
10	A Yes.
	Q What was your occupation on June 26, 1974?
11	A Driving a truck.
13	THE COURT: Please keep your voice up, Mr.
	Andrews. It's hard to hear you. Pretend you're on your
14	truck.
15	MR. GROSS: Thank you, your Honor.
16	to approximately 6:00 P.M
17	on June 26, 1974, did there come a time when you
18	arrived at the Midtown Packing Company?
19	arrived at the midtown racking company

20 A Yes.

21

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Q Where is the Midtown Packing Company located?

A On the corner of Twelfth Avenue and 125th Street, Manhattan.

Q Who, if anyone, was with you?

A Albert Fillmore.

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1	18 rdmch	Andrews-direct 25
2	Q	What was his job that evening, Mr. Andrews?
3	A	He was a co-driver and helper.
4	Q	Now, what, if anything, did you and fillmore
5	do at the	Midtown Packing Company?
6	A	We were loading our truck with meat.
7	Q	Had you previously loaded meat from other dealers
8	on your tr	ruck that evening?
9	A	Yes.
10	Q	Where were you supposed to deliver the meat?
11	A	Distributed between Connecticut, Massachusetts
12	and Rhode	Island.
13	Q	When were you going to deliver it?
14	A	The following day.
15	Q	Were you going to drive to Connecticut that
16	evening?	
17	Α	Yes.
18	Q	Now, when you and Fillmore finished loading
19	the truck	at Midtown Packing, what, if anything, did you do?
20	A	Got on our trucks and we were going to make one
21	last pick	up in the Bronx.
22	Q	Was Fillmore with you?
23	A	Yes.
24	Q	Now, directing your attention to approximately
25	11:00 o'c	lock that evening, did there come a time when you

seat and leaned across the center part, the console, and asked what was happening.

I said yes, that I thought it was a hijack.

What did he say? 0

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He said yes. He asked me if I knew what the gun in his hand was and I said yes. I said it was a gun.

When the man got in the truck, did you see his face?

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i	20 rdmch	Andrews-direct 27
2	Α	Yes.
3	Q	Was he wearing a mask?
4	A	No.
5	Q	Do you see that man in this courtroom today?
6	A	Yes.
7	Q	Can you point him out, please?
8	A	The man on the end.
9	Q	What color suit is he wearing?
10	A	Green; sort of green.
11		THE COURT: Let the record reflect that he has
12	identifie	ed the defendant Lynch.
13	Q	Mr. Andrews, have you identified Mr. Lynch before?
14	A	Yes.
15	Q	Where?
16	A	In a lineup at FBI Headquarters.
17	Q	Will you tell the jury how that lineup took place?
18	A	Well, we were brought into a dark room with several
19	windows	-
20	Q	Were you brought in separately, alone?
21	A	Yes, separately; right.
22	Q	And there was a room at the FBI headquarters?
23	A	Yes.
24	Q	What happened there?
25	A	Several windows in the room and they told us to

1	21 rdmch Andrews-direct 28
2	look through the windows and see if we could see anybody
3	we recognized.
4	Q What was on the other side of the windows?
5	A Several men standing beside each other, looking
6	at me.
7	Q And what, if anything, did you do?
8	A I identified the man I identified the man in
9	the lineup.
10	Q And who did you identify?
11	A Lynch.
12	Q Now, before you viewed the lineup, did anyone
13	tell you what number Lynch would be or what he would be
14	wearing?
15	A No.
16	MR. GROSS: May I have this marked as Government
17	Exhibit 1, your Honor.
18	THE COURT: Mr. Gross, you can mark your own
19	exhibits so we won't be held up with it.
20	(Government's Exhibit No. 1 was marked for
21	identification.)
22	Q Mr. Andrews, I show you a picture marked as

Do you recognize it?

A Yes.

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Government's Exhibit 1.

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Q Does it appear to depict the lineup as you viewed it on November 12, 1974?

A Yes.

Q Which man in the photograph did you identify at the lineup as the man who had gotten in your truck with a gun on June 26, 1975?

A No. 4.

MR. GROSS: Your Honor, Mr. Siegal has stipulated that No. 4 is Mr. Lynch, and also that this is a photograph that was taken of a lineup that Mr. Andrews testified he viewed.

May I offer it into evidence and pass it around to the jury?

THE COURT: Any objection?

MR. SIEGAL: No objection.

THE COURT: Received.

(Government's Exhibit No. 1 for identification was received in evidence.)

MR. GROSS: May I, with the Court's permission?

THE COURT: Yes.

(Government's Exhibit No. in evidence is passed to the jury.)

THE COURT: Do you have a duplicate?

MR. GROSS: Yes.

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1	23 rdmch Andrews-direct 30
2	THE COURT: Give the duplicate to the jurors in
3	the back row.
4	MR. GROSS: I'm sorry. I don't, your Honor.
5	I apologize.
6	(Pause)
7	THE COURT: All right, Mr. Gross.
8	Q Now, returning to the evening of June 26, 1974,
9	what, if anything, did Mr. Lynch say when he got into your
10	truck?
11	A He told me to follow the Cadillac. It was a
12	yellow Cadillac in front of my truck. And he told me to
13	follow that truck until it came to a stop and then I was to
14	stop behind it.
15	Q Were you scared at that point?
16	A Yes.
17	MR. SIEGAL: I object to the leading and
18	suggestions.
19	THE COURT: Sustained.
20	Q What, if anything, did you do, Mr. Andrews, after
21	Mr. Lynch told you to follow the car?
22	A I followed it.
23	Q About how far?

And what happened at that point?

Three or four blocks.

24

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Q

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A He then told us to, or told me to release all the brakes on the truck and to wait while he and Fillmore got out of the truck and went to the corner, and that I was to follow them. He said if I tried anything that he would, you know, hurt me, blow the head off, or whatever.

6

Q Now, what did Fillmore and Lynch do?

8

A They got out of the truck and went to the corner.

9

Q Q And did there come a time when you joined them on the corner?

10

A Yes.

11

Q Were you able to see Lynch's face as you approached him?

13

12

A Yes, as I approached.

14 15

Q How close did you come to him?

16

A Within a few feet.

17

Q Now, what at that point did you do?

18 19 A I stood beside Lynch and Fillmore and then he told us to walk to the yellow Cadillac.

20

Q And when you arrived at the yellow Cadillac, what did you do?

21

A He told us to get in the back seat and to put our heads down as low as we could get them, between our legs.

23

Q Did you get into the back seat?

25

A Yes.

1	25 rdmch	Andrews-direct 32
2	Q	And what did Mr. Lynch do?
3	A	He got into the passenger seat in the front.
4	, Q	Was there another person in the automobile?
5	A	Yes, there was.
6	Q	Sitting where?
7	A	In the driver's seat.
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1	rdlt 1	Andrews-direct 33
2	Q	Do you see that man in this courtroom?
3	A	Yes, I do.
4	Q	Point him out, please.
5	A	The man in the blue suit.
6		MR. GROSS: May the record reflect the witness
7	has identif	ied the defendant McNally.
8		THE COURT: Yes.
9	Q	Have you identified the defendant McNally before?
10	A	Yes, I have.
11	Q	Where?
12	A	At the Police Department and at the FBI.
13	· Q	Did you have an opportunity at one point to view
14	Mr. McNally	in the line-up?
15	A	Yes, I did.
16	Q	How did that line-up occur?
17	A	The same as the other line-up.
18	Q	Now, before that line-up, did anyone tell you what
19	number Mr.	McNally would be or what he would be wearing?
20	A	No.
21	Q	I've placed before you what has been premarked as
22	Government'	s Exhibit 2. Do you recognize that photograph?
23	A	Yes, I do.
24	Q	Does it appear to depict the line-up as you des-
25	cribed it o	n October 30, 1974?

3 a.m.

	1	rdlt 2	Andrews-direct
	2	λ	Yes.
	3	Q	Now, which man in the photograph did you identify
	4	at the line	-up as the driver of the yellow Cadillac?
	5		MR. SIEGAL: It is conceded it is McNally.
	6	Q	What number?
	7	A	Number 3.
	8		MR. GROSS: Offer it in evidence.
	9		MR. SIEGAL: No objection.
	10		THE COURT: Received.
xxx	11		(Government's Exhibit 2 is received in evidence.)
	12		THE COURT: Do you have a duplicate?
	13		MR. GROSS: I don't have one, your Honor.
	14		THE COURT: Perhaps you can keep questioning as
1	15	the jurors	are looking.
	16	Q	Now, on June 26th, after you and Fillmore got
	17	into the c	ar driven by Mr. McNally, what, if anything, did
	18	Mr. Lynch	say?
	19	A	He just told us to keep our heads down and don't
	20	try anythi	ng and we wouldn't be hurt.
	21	Q	Now, how long were you driven around?
	22	A	Approximately an hour and a halr.
	23	Q	Do you know what area of town you were being
	24	driven arc	ound in?
	25	A	No.

1	rdlt 3	Andrews-direct
2	Q	Now, did there come a time when Lynch left the
3	automobile?	
4	A	Yes.
5	Q	What did he do, if anything, when he came back?
6	A	He brought back some beer.
7	Q	And what, if anything, did he do with the beer?
8	A	Offered us one or gave us one.
9	Q	Did you take some?
10	A	Yes.
11	Q	Now, after that did you continue driving around?
12	A	Yes.
13	, Q	For approximately how long?
14	A	Well, another half an hour to an hour.
15	Q	What, if anything, happened at that point?
16	A	I had to go to the bathroom, so he pulled over at
17	a bar for me	e to go in.
18	Q	Did you tell that to Lynch?
19	A	Yes, I did.
20	Q	What, if anything, did you and Mr. Lynch do?
21	A	We walked into the bar and went to the rest room.
22	Q	And at that point I presume what occurred, as you
23	have stated	it.
24		Did there come a time when you left the men's room?
25	λ	Yes.

- 11	
1	edlt 4 Andrews-direct
2	_Q Was Mr. Lynch with you?
3	A Yes.
4	Q Where did you go?
5	A Well, he told me to step out onto the sidewalk
6	opposite the doorway and he was going to make a phone call
7	in a pay phone that was right there in the doorway.
8	Q And did you observe him making a phone call?
9	A I had my back to him at that time.
10	Q What happened at that point?
11	A He made the phone call and then he called me inside
12	to where he was making it and he told me the person who was
13	driving my truck couldn't move it or something. The brakes
14	or something went on. He wanted me to go on the phone and
. 15	tell the driver how to move the truck.
16	Q Did Mr. Lynch have his revolver at that time?
17	A Yes, he had it under a coat in his hand.
18	Q What, if anything, did you do as a result of that?
19	A I told the man on the phone how to move the
20	truck.
21	Q Now, did there come a time when you and Mr. Lynch
22	returned to the automobile?
23	A Yes.
24	Q And what happened at that point?
25	A Well, he told us that he wanted to go back inside

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rdlt 5

Andrews-direct

the bar because the car was stolen and he didn't -- the car was getting hot, I imagine -- he said it was getting hot, and that we all could go into the bar as long as we didn't try anything and nobody would get hurt.

He thought that would be much more comfortable, and so we did.

- Q Who went into the bar?
- A Lynch and I and Fillmore and McNally.
- Q And did you enter the bar?
- A Yes.
- Q Where did the various individuals sit?

A Fillmore, Lynch and I sat in a booth at the end of the room where the bar was. Lynch and I sat next to each other. I was on the inside of the bar, he was to my left.

Fillmore was opposite us and McNally sat at the bar.

Q Were you able to see Lynch's face while you were sitting in the booth at the bar?

A Yes. I kept looking up but he kept telling me not

- Q You were able to see Mr. McNally's face as you were in the bar?
  - A Yes.
  - Q Where was he sitting?
  - A He was sitting on the corner of the bar, like a

Andrews-direct
zait o
side view of him. But he kept looking over and I kept looking
up.
Q How far was he from you?
A I'd say ten to twelve feet.
Q Approximately how long would you say that you and
Mr. Lynch and Mr. McNally and Mr. Fillmore stay in the bar?
A Between an hour and two hours.
Q Did you have a conversation in the bar?
A Yes.
Q And what, if anything, did Mr. Lynch say to you
and Mr. Fillmore and what, if anything, didyou say to him?
A Well, he was just trying to make us calm. He
was talking about his profession, how it was just a job to
him and that we were crazy to work the way we did. That's
about it.
Q Did there come a time when you left the bar?
A Yes.
Q Who left?
A All of us.
Q And where did you go?
A Back to the car.
Q What did you do in the car?
A Fillmore and I got back into the back seat, they
got in the front seat and we started riding again. They tol

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us to put our heads down again.

O Did there come a time when Lynch left the car again to make a phone call?

A Yes.

Q What happened when he returned to the vehicle?

A He wanted a set of keys, because they couldn't break the lock on the trailer.

Q What, if anything, did he say to you?

A If we didn't give him the keys he would blow our heads off.

Q What was his verbal tone at that time?

A Angry.

Q Did you give him the keys?

A Fillmore gave him the keys.

Q And what happened after that?

A We drove around a little while longer and he left the car.

Q He meaning whom?

A Lynch.

Q What happened at that point?

A Another man got in.

Q What happened at that point?

A Well, I was getting kind of tired around there, so I was getting pretty sleepy, so I don't remember too much

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after that. Just riding around. I remember coming to a stop and we were brought -- somebody got out of the car. I remember that. At that point I fell asleep.

- Q Was Mr. Lynch in the car at that point?
- A I don't remember right then.
- Q Was Mr. McNally in the car at that point?
- A No -- wait a minute. Mr. Lynch wasn't in the car.

  Mr. McNally was in the car, as far as I can remember right now
  - Q WAs there another individual?
  - A Yes.
  - Q What happened when the car stopped?
  - A I don't know .
- Q Did there come a time when you parked on the lower east side?
  - A I don't know exactly where it was. We did park.
  - Q And what happened at that point?
- A We were brought sandwiches, coffee. It was daylight then.
- Q Did you have an opportunity to see Mr. McNally's face at that point?
  - A Yes, several times.
  - What parts of his face did you see?
- A Side view and he kept turning occasionally and I got a front face view.

	41
rdlt 9	Andrews-direct
Q	Now, did there come a time when you and Fillmore
were releas	sed, so to speak?
A	Yes.
Q	Where?
A	Lincoln Square in the subway station.
Q	Approximately what time?
A	Between early morning, between 6 and 7, some-
where arou	nd there.
Q	When you were released, what, if anything, was said
to you?	1
A	We were told to go down the stairs of the subway
and take t	he subway and not to return.
Q	Did there come a time later that day when you
found your	truck?
Α	Yes.
Q	When, approximately?
A	Late afternoon.
Q	And how did it come that you were able to find
your truck	
A	Well, we had a phone call at our main office
telling us	where the truck was.
Q	From whom?
A	Presumably the hijackers.
0	And your main office called you?
	Were release  A  Q  A  Q  A  where arous  Q  to you?  A  and take to  Q  found your  A  Q  your truck  A  telling us  Q  A

1	rdlt	Andrews-cross 49
2	o	Ever buy any meat in Old Bahamia?
3	۸	Never
4	Q	Any of these places?
5	A	No, sir.
6	Q	Now, there isn't any question but that when someone
7	came to the	side of your trailer truck and told you to either
8	stop, or I	don't remember, whether to stop or open the door,
9	the man had	a gun; right?
10	A	Yes.
11	Q	You saw the gun?
12	A	YEs.
13	Q	You saw the man's face?
14	A	Yes.
15	Q	And you opened the door?
16	A	My partner opened the door.
17	Q	Or your partner opened the door; right?
18	A	Yes.
19		THE COURT: What were the lighting conditions?
20		THE WITNESS: At that point they were dark.
21		THE COURT: Dark?
22		THE WITNESS: Yes.
23	/	THE COURT: Any street lights in the vicinity?
24		THE WITNESS: I believe there is some lighting on
25	that street	, yes.

- 11		
1	rdlt 50	Andrews-cross
2		THE COURT: How could you see his face if it was
3 .	dark?	
4		THE WITNESS: He is only four feet from me.
5	0	At any rate, did this man with the gun get into
6	your traile	r truck?
7	A	Yes.
8	Q	The cab of the truck?
9	A	Yes.
10	Q	Did he ride around with you for any length of time
11	or any numb	er of blocks?
12	A	In the truck?
13	Q	Yes.
14	A	Just to the point where he told me to drive.
15	Q	What was that, a couple of blocks?
16	A	Yes.
17		THE COURT: What time of the night was this?
18		THE WITNESS: After 11.
19		THE COURT: All right.
20	Q	And told you to stop at a certain place?
21	A	Yes.
22	0	And before he told you to stop, you had an
23	observation	of his face?
24	A	Yes.
25	0	You saw him?

1	rdlt	Andrews-cross 52
2	Q	McNally and Lynch; right?
3	A	Yes.
4	Q	You saw them both?
5	A	Yes.
6	Q	And you were there and Fillmore was there; is
7	that correc	t?
8	À	Yes.
9	Q	How long did you drive around now, the four or
10	you, before	you got a sudden urge to go to the toilet?
11	A	Approximately one to two hours.
12	Q	And during the one to two hours that you were
13	driving aro	und you were blindfolded, were you?
14	A	No.
15	Q	And you were not put down on the floor with your
16	face down a	and told not to look, is that right?
17	A	We were told to put our heads down and not to
18	look.	
19	Q	But you looked, didn't you?
20	A	Yes.
21	Q	When you went to the toilet they didn't hide your
22	face, did t	they, or your eyes?
23	A	No.
24	0	They stopped somewheres, you say?
25	A	Yes.
	1	

rdlt 60 Andrews-cross 60
were not friends of yours, were they?
A No.
Q And you had a very good look at these people that
you were with from 11 o'clock at night until about 6 or 7 in
the morning; correct?
A Several times.
Q Several times. And your memory was good, was it not
and your recollections were good. The very next day on
June 27th, when you were taken to the 41st Precinct in New
York, is that correct?
A Yes.
Q Do you recall a Detective Berry?
A I don't recall any name.
Q And/or Detective Mulhern?
A I don't remember.
Q At any rate, you went to the 41st PRecinct;
correct?
A I went to some precinct. I don't know which one.
Q If I tell you the 41st, will you accept that?
A I will take your word for it.
Q Was Fillmore taken there, too?
A Yes.
Q And when did you get to this precinct?
A The morning, sometime. I don't remember exactly

25

when.

rdlt

Q By the way, you were put into the subway station at what time or the entrance, at what time?

A 7, 8 o'clock in the morning. Somewhere around that time.

- Q About 7?
- A About 7.
- Q What time did you report to the police that your trailer turck was stolen?

A I don't know exactly, but I'd say an hour or maybe a little more later.

- Q or a little more?
- A Yes.
- Q Maybe two hours; correct ?
- A Correct.
  - Q Did you want to give the drivers of the trailer truck an opportunity to get out of town?
    - A No.
  - Q But you did not call the police immediately; is that right?
    - A Right.
  - Now, you are at the 41st Precinct with Detective

    Berry and some other police and you tell them your story, like

    you told this Court and jury; correct?

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A Correct.

Q At 11 o'clock you were stopped, a man with a gun, opened the door, went in, came out, put you in a yellow Cadillac; you told all that to the detectives, didn't you?

A Yes.

Q That you were driven around for hours?

A Yes.

Q You also told them you were in a bar with these people, didn't you?

A Yes.

Q For hours. That you had a good look at them; is that right?

A Yes.

Q And a very good look, is that right?

A Yes.

O That you could unquestionably pick these people out; is that correct?

A Yes.

Q Identify them, so to speak; right?

A Yes.

Q And did Detective Berry and the other detectives who were there present you with a batch of pictures and say to take a look at what they call a spread of pictures of some sort, and say "take a look"?

1	rdlt		Andrews-cross 63
2		Α ,	Yes. They had a machine.
3		Q	And you looked at them?
4	A	A	Yes.
5		Q	Now, did you make an identification?
6		A	Yes, I did.
7		Q	Are you saying to us, sir, that you told Detective
8	Berry,	who	showed you these pictures, that you recognized
9	someor	ne?	
10		λ	Yes.
11		Q	In that picture?
12		A	Yes.
13		Q	Isn't it a fact, sir, that on June 27th at the 41st
14	Preci	nct wh	nen you were shown a spread of pictures by Detective
15	Berry	, that	you told them that you could not identify anyone?
16		A	No.
17		Q	You're sure about that?
18		A	Positive.
19		Q	Now, on August 5th were you in the FBI Headquarters?
20		A	Yes.
21		Q	On August 5th, sir at FBI Headquarters that's
22	about	what	, five or six weeks later, after this happening on
23	June	26th,	were you shown a picture of this man, Lynch?
24		A	No.
25		Q	You deny that you were shown a picture of Lynch?
	1		

1	rdlt	Andrews-cross 64
2	A	I didn't see one.
3	Ω	On August 5th.
4	A	I didn't see one.
5		MR. SIEGAL: May I approach the bench?
6	-	(At the side bar.)
7		MR. SIEGAL: There is a whole bunch of writings
8	on the back	of Court's Exhibit 2, your Honor. I just want
9	him to look	at the front. I don't want the jury to see the
10	back of it.	
11		THE COURT: Paste something over the back of it.
12		MR. SIEGAL: We can do that after lunch.
13		THE COURT: Yes. Clean it up.
14	4	(In open court.)
15	Q	Mr. Andrews, I am going to show you a picture which
16	is identi	ified in this courtroom as Court's Exhibit 2, and
17	ask you to	look at it and ask you whether or not on August
18	5th at FBI	Headquarters you were shown this picture.
19		I don't remember seeing it.
20	Q	And do you remember on that date telling the FBI
21	that you d	id not recognize the picture of Mr. Lynch?
22		MR. GROSS: Objection to the question, your Honor.
23	Q	Well, did you identify
24	1	MR. GROSS: No foundation.

Were you shown a picture by the FBI on that date

25

Q

and were you asked by FBI if that was the man Lynch who pointed the gun at you and took you and your truck on June 26, 1974 and was it not your answer that you could not recognize that picture?

A No, sir.

Q That was not your answer?

A No.

MR. GROSS: Your Honor, he has asked two questions.

THE COURT: I am afraid the question is bad in

form, Mr. Siegal.

MR. SIEGLA: Could be.

Λt any rate, were you shown pictures by the FBI on the 27th -- on the 5th of August, 1974?

A Yes, lots.

*		00
1	1 rdmch	Andrews-cross
2	Q	And were you asked whether or not you could
3	identify	any of those pictures?
4	A	Yes.
5	Q	Did you identify any?
6	A	I identified a picture out of them.
7	Q	Did you identify Mr. Lynch?
8	Λ	No, sir.
9	Q	And when you say "no, sir," were you shown this
10	picture	that I have just showed you, Court's Exhibit 2?
11	A	I don't remember seeing it.
12	Q	Now, there came a time, did there not, that you
13	were bro	ought down to a lineup?
14	A	Yes.
15	Q	At FBI headquarters?
16	A	Yes.
17	Q	Right?
18	A	Yes.
19	. Q	And when was that?
20	A	The exact date?
21	0	About when? Sometime in October and November of
22	1974?	
23	Λ	Yes, I would say around then.
24	Q	About four or five months after the happening
25	here?	

I don't understand. MR. GROSS: I object to that as vague, your

22 Honor.

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MR. SIEGAL: Withdraw it.

THE COURT: I was going to say if he understands it he can answer it.

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MR. SIEGAL: That's one I lost.

Did he discuss with you the necessity of making an identification in this case?

A Yes.

Did you tell these people in the FBI on August 5th that you, on June 27th, had been shown a spread of pictures by Detective Berry up at the 41st Precinct?

> MR. GROSS: May I have the question? (Record read)

Yes. A

Did you? 0

Yes. A

Did you tell them whether or not you at that time identified Lynch or not?

MR. GROSS: Your Honor, there is no showing that he knew the name or that the picture was there.

MR. SIEGAL: I object to that, your Honor.

THE COURT: I think the question isn't clear.

Did you identify anyone in the spread they showed you at the 41st Precinct?

THE WITNESS: Yes.

You are sure of that? Q

Yes, positive. A

All right. Q

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1	4 reach Andrews-cross
2	THE COURT: How many pictures did you look at
3	the e?
4	THE WITNESS: Hundreds.
5	Q Did you tell the FBI the name of the bar that
6	you had been taken in?
7	A I don't recall.
8	Q You don't recall telling them or you don't recall
9	the name; which is it?
10	A I don't recall telling them or even bringing it
11	up.
12	Q Did you take them or did they ask you to take them
13	to the area of 88th Street, which you were talking about
14	before, to look for this bar?
15	A Yes.
16	Q Did you go into the bars?
17	A Yes.
18	Q Did you find the bar?
19	A Yes.
20	Q And did you see the bartender?
21	A I don't recall if he came or not. He wasn't
22	working at the time we got there.
23	Q You told that to the FBI, that the bartender that
24	was there on that day when you were in there with the FBI
25	was not the same bartender that was there on June 26th? Did

6		79	1
1	14 rdmch	Andrews-cross	1
2	A W	e were busy that day, yes.	i
3	Q D	id you make any telephone calls?	1
4	A Y	es.	
5	Q I	low many?	
6	λ 1	don't remember.	
7	Q 1	You don't know?	
8	A 1	We make several calls every day to find out what	\ i
9	we have for		
10		Did you make any calls telling anybody where you	
11	are going	to make a pickup and where your next pickup was	
12	going to b	e?	
13	Λ	Yes; our office.	
14	Q	Nobody else?	
15	A	No, I don't believe so.	
16	Q	None of these so-called hijackers had sat around	
17	with you	in a bar for a couple of hours?	
18	A	No.	
19	Q	Are you still certain this is my last questio	
20		till certain that on June 27th, one day after thi	S
21	hijacking	, you identified a picture of Lynch to Detective	
22	Berry or	any other policeman in there?	
23	A	Not of Lynch, no.	
24	Q	Who did you identify?	
25	A	McNally.	

1	16 rdmch Andrews-redirect
2	Q Did anyone at the FBI tell you who to choose or who
3	not to choose?
4	A No.
5	MR. SIEGAL: No. 4 is McNally.
6	MR. GROSS: Offered in evidence.
7	THE COURT: Received.
8	MR. GROSS: I offer the entire spread.
9	MR. SIEGAL: You are not offering the whole
10	thing, are you?
11	MR. GROSS: No, I can offer 4 at this point,
12	your Honor.
13	THE COURT: All right. 4 is received.
14	· (Government's Exhibit No. 3 for identification
15	was received in evidence.).
16	Q When you were in the bar that you testified to,
17	do you know where Mr. Lynch had his gun?
18	A Yes.
19	Q Where?
20	A On his lap under a coat.
21	Q Where was it pointing?
22	A I don't know.
23	Q What, if anything, did he say to you before you
24	went into the bar?

xx

A He said that if we tried anything somebody would

1	rdl1. 2						
2	Andrews contained meat to be delivered from companies in New						
3 .	York, New York to:						
4	1. M.T. Marcello, Providence, R.I.						
5	2. National Food Service, Providence, R.I.						
6	3. Hartford Provision, New Britain, Conn.						
. 7	4. James Derba, Chelsea, Mass.						
8	5. New York Meat, Hartford, Conn.						
9	6. J.O. Damers, Woonsocket, R.I.						
10	7. Royal Packing, East Providence, R.I.						
11	8. G. Spencer, Springfield, Mass.						
12	9. Boston Beef, Worchester, Mass.						
13	10. D. Hodash, Providence, R.I.						
14	The total value of which was in excess of						
15	\$35,000.						
16	Thank you, your Honor.						
17	THE COURT: Proceed.						
18	MR. GROSS: Luther Thomas.						
19	LUTHER THOMAS, called as a witness on						
20	behalf of the government, being first duly sworn,						
21	testified as follows:						
22	DIRECT EXAMINATION						
23	BY MR. PEDOWITZ:						
. 24	Q MR. Thomas, by whom are you employed?						
25	A Naps Transportation.						

## Thomas-direct

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Keep your voice up so that the jurors can hear you and also his Honor, Judge MacMahon.

Where is Nap's Transportation located?

833 Washington Street.

In what capacity were you employed by Nap's Transportation Company?

> Truck driver. A

By whom were you employed on September 6, 1974?

Nap's Transportation.

Directing your attention to that date, September 6, 1974, did you pick up a load of meat from the Midtown Packing Company?

Yes, I did. A

And where is the Midtown Packing Company? 0

At 12th Avenue and 125th Street, New York. A

That is here in Manhattan? 0

Right. A

Approximately how much meat was on the truck? Q

Approximately 27,000 pounds. A

And how did the meat get onto the truck? Q

I and my helper loaded it.

Could you speak up a little bit. Q

I myself, and my helper, loaded it. A

Mr. Thomas, where were you instructed to deliver Q

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ma		-		
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## Thomas-direct

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2	the	eat?

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- A At Shoprite Warehouse in Elizabeth, New Jersey.
- Q And did there come a time about 2 o'clock on the afternoon of September 6, 1974, when you left Midtown Packing Company with a load of meat to be delivered to New Jersey?

## A Yes, I did.

THE COURT: Would you voice your answer, please.

Just don't nod your head.

- Q Keep your voice up, Mr. Thomas. What was your answer?
  - A Yes.
- Q As best you can recall, what did the tractor that you were driving that day look like?
  - A It was a red and white International.
- Q And what was the license number of the tractor, if you recall?
  - A 1876 TR, New York.
  - Q It was a New York license plate?
  - A Right.
- Q And what did the trailer you were puttling that day with your tractor look like?
- A It was a silver trailer with big red and white signs on the side that says "Midtown Packing Company."
  - Q Who else was with you when you were driving the

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tractor trailer that day?

A Edward Jermott.

O And who is Mr. Jermott?

A He is my helper.

Q Where did you drive to as you started your trip to Elizabeth, New Jersey, that day?

A I was coming down 9th Avenue, back downtown, and I stopped at a light at 34th Street and 10th Avenue.

O When you stopped at 34th Street, what happened there?

A A man entered the truck with a gun in his hand and he said "This is a 38. Do you know what it is? I don't want to have to show it to you again."

JUROR # 1: Your Honor, excuse me, the jurors cannot hear.

THE COURT: I am having great difficulty.

If you can't hear him, we can't. Keep your voice

up.

What did the man say?

THE WITNESS: He said "This is a 38. I don't want to have to show you again. Do you know what a 38 is?"

Q Try and keep your voice up to at least that level. Shout a little bit.

Now, what did the man do when he said that this is

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2 a 38.

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A He had like a green windbreaker in his hand with the gun under the windbreaker. He pulled it back enough for me to see it.

THE COURT: I'm sorry, I cannot get it.

Speak a little slower and louder, please. Try again.

THE WITNESS: I said he had like a green windbreaker in his hand. He pulled the gun with the windbreaker back where I could see the gun. He said to listen and do as he said and nobody would get hurt.

- Q Now, where were you seated when this man got into the truck?
  - A In the driver's seat.
  - Q And where was Mr. Jermott?
- A He was in the passenger seat and he made him move over between the passenter seat and the driver's seat.
- Now, when this man got into the truck, what was he carrying?
- A He had a green windbreaker with a gun in his hand under the windbreaker.
  - Q What did the gun look like?
  - A A 38 revolver.
  - Q Had you ever seen a firearm like that before?

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2 A Yes, I have.

Where had you seen a firearm like that?

A I'm from the south and we have hardware stores that sell them, we have gun shops there and I have seen them all around.

Q What, if anything, could you tell about whether or not the gun was loaded?

A I could see the bullets in the gun.

Q What was this man who got into your truck with a loaded revolver wearing, if you can remember?

A He was wearing a pair of dark pants. I don't recall whether they was blue or black, but they was dark. He had on like a dark sweater-shirt, with light stripes.

Q Mr. Thomas, about how many hours on September 6, 1974, did you spend with that man who was holding the 38?

A Approximately ten hours.

Q And what did that man look like? What was his approximate age?

A Well, I would say he was in late 40s. He was about 5'8 or 9 inches tall, and he weighed approximately 170 pounds.

O What color hair did he have?

A He had blackish-grey.

Q Mr. Thomas, do you see the man who stopped you at

1	rdlt	Thomas-direct 92
2	34th STreet	with the gun, in this courtroom?
3	A	Yes.
4	Q	You do?
5	Α ,	Yes.
6	Q	Would you point him out, please?
7	Α	Him (indicating).
8	Ü	What color suit is he wearing?
9	Α	He's wearing a brown suit.
10		MR. PEDOWITZ: May the record reflect that the
11	witness has	pointed out Mr. John Lynch, the defendant?
12		THE COURT: Yes.
13	Q	Mr. Thomas, have you previously identified Mr.
14	Lynch, the	defendant?
15	A	Yes, I have.
16	Q	Where did you identify him?
17	A	Down at FBI Headquarters.
18	Q	And when was that, if you remember?
19	Λ	November 12, 1974.
20	Q	Of what year?
21	A	1974.
22	Ω	What was the date so the last juror can hear you.
23	Α	November 12, 1974.
24	Q	Will you please tell the jury what circumstances
25	were of you	ur identification of Mr. Lynch at that line-up?

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What did the line-up look like and where were you standing?

A Well, I was like in the hall through the windows.

There was about seven or eight in the line-up, you know, through the window.

Q Mr. Thomas, before the line-up, did anybody tell you what number Mr. Lynch would be wearing that day or what he might be wearing?

A No, they didn't.

MR. PEDOWITZ: Your Honor, I am showing a picture to Mr. Siegal which has previously been marked as Government's Exhibit number 5 for identification.

MR. SIEGAL: We will concede number 5 in the lineup was Mr. Lynch.

MR. PEDOWITZ: I wasn't asking for a concession.

THE COURT: I don't know why you didn't show it to the witness first. Go ahead.

MR. PEDOWITZ: Yes, your Honor.

Q Mr. Thomas, you are now looking at Government's

Exhibit number 5 for identification. Does that appear to be a

picture of the line-up that you saw on November 12, 1974?

A Yes, it does.

Did you see anyone in there that you recognize?

A Yes.

Q Which number?

1	rdlt		Thomas-direct	94
2	A	Number 5.		
3	Q	Who is that	man?	
4	A	That man her	re (indicating).	
5	Q	Is that the	man you picked out	at the FBI Head-
6	quarters li	ne-up?		-
7	Λ	Yes.		
8		THE COURT:	The witness did not	answer the ques-
9	tion except	that he poi	nted to Mr. Lynch.	
10		MR. PEDOWIT	Z: I'm sorry, your	Honor.
11	4	May the rec	ord also reflect tha	t he did indeed
12	point to Mi	Lynch, you	r Honor?	
13		THE COURT:	I just said that.	
14		MR. PEDOWIT	Z: The government o	offers this picture
15	into evider	nce.		
16		MR. SIEGAI	: No objection.	
17		THE COURT:	Received.	!
18		(Government	's Exhibit 5 receive	ed in evidence.)
19		MR. PEDOWIT	TZ: May we show this	s to the jury?
20		THE COURT:	Yes, but keep ques	tioning.
21	Q	Mr. Thomas	, returning to the a	fternoon of September
22	6, 1974, w	hat, if anyth	ning, did the defend	ant John Lynch say
23	to you whe	n he got into		
- 24	A		aid, "This is a 38."	
25	know what	it was. And	I said "Yes." He s	aid, "Do as I say and

rait

nobody will get hurt."

He told me to make a right turn. I made the right turn. I got to the next corner and he said to make another right turn.

He said "The first place you see where you can park at, go over and park."

- Q Where did you park?
- A This was around 37th Street and 10th Avenue.
- O Mr. Thomas, I am going to ask you once again to please keep your voice up because I think the jurors are having some difficulty in the back hearing you.

Did you indeed park at 37th Street and 10th Avenue?

- A Yes, I did.
- Q And what happened when you got to 10th Avenue?
- A Well, I sat there until approximately 4 o'clock and we waited there until approximately 4 o'clock. Then he told me to pull away from there, we couldn't park there any longer.
  - Q And where did he tell you to go?
- A Go to the first service area on the New Jersey Turnpike.
  - Q Did you do that?
  - A Yes, I did.

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

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O When you got to the first service area of the New Jersey Turnpike, what, if anything, did Mr. Lynch tell you to

A Told me to pull as close to the phone booth as I could because he wanted to make a phone call.

Q What, if anything, happened then?

A Well, I couldn't get too close to the phone booth so he couldn't make a phone call, so he told me to pull out and go to the second service area where he could make a phone call.

Q What, if anything, happened when you got to the second service area?

A Took my helper out of the truck and he went to the phone booth and made a phone call.

- Q Mr. Thomas, I am having a little bit of difficulty.
  THE COURT: Repeat that answer.
- Q Repeat that answer.

A He took the helper out of the truck and went to the phone booth and he made a phone call at the second service area.

Q Did Mr. Lynch have the gun with him when he took your helper, Mr. Jermott?

A Yes, he did.

Q What happened after they made that phone call?

A He came back to the truck and told me to turn

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around, get off the Pike and come back to the first service area on the Pike.

Mhat sort of route did you follow to get back to the first service area?

A Off at Exit 12, made a complete circle around and headed back north on the Pike to Exit 16, which would be the Lincoln Tunnel, and come around to Route 3 and made another circle back to the Pike.

Q When you arrived at the first service area for the second time that day, what happened then?

A He took my helper out and went back to the phone booth and made another phone call.

Q And after they returned from that second phone call that day, the first one at this first service area, what happened then?

A He came back. We sat in the truck for a while and told us to get out and stretch our legs, because we was a little tired. We got out of the truck and sat there for a while.

- Q Who got out of the truck?
- A All three of us.
- Q How far were you from Mr. Lynch when you got out of the truck?
  - A I'd say approximately three feet, four feet, would

1	rdlt	Thomas-direct 98	
2	be it.		
3	Q	What sort of look did you get at him?	
4	А	Good look at him.	
5	0	How many minutes did you look at him?	
6	A	Approximately thirty minutes.	
7	Q	What time?	
8	A	5:30, 6 o'clock.	
9	Q	Was it still light?	
10	А	Still light out.	
11	Q	When you stretched your legs what happened	then?
12	А	Came back to the truck because it was rain	ing.
13	Sat in the	truck for a few minutes and just suggested	that
14	he wanted s	something to drink. So there was no place ye	ou could
15	get nothing	g to drink. So he took Edward out, my helpe	r out,
16	and they we	ent into the service area and came out with	some
17	coffee.		
18	Q	What sort of drink did Mr. Lynch initially	want?
19	A	Beer.	
20	0	Why couldn't you get any beer?	
21	A	Because there was no place. The place acr	oss
22	the alley f	from there but you couldn't get through the	fence.
23	. Q	After he realized he couldn't get any beer	what
24	happened th	hen?	
	II		

Got coffee.

1	rdlt	Thomas-direct	99
2	Q	Who went in and got coffee?	
3	λ	Him and my helper.	
4	Q	What did he do with his gun?	
5	A	Took it with him.	
6	Q	Did there come a time when Mr. Jerr	nott, your
7	helper, and	Mr. Lynch, returned from the cafeto	eria?
8	A	Yes. They sat there for a while,	drunk the coffee
9	Then he dec	ided to make another phone call. H	e went up to
10	make anothe	r phone call. That's when a red Che	vy Nova come up.
11 ,	Q	What happened when the red Chevy N	ova came up?
12	A	He made Edward get in the car. Th	en he came, him
13	and another	guy came over to the truck. I sho	wed them where
14	the brake r	elease was	:
15	Q	Who came over to the truck?	1
16	A	Mr. Lynch.	
17	0	And who else?	
18	A	Another guy. I never seen him.	
19	Q	You don't know him?	
20	A	I never seen him before and never	seen him after.
21	0	What happened when they came to t	he truck?
22	A	I showed him the brake release on	the truck. Then
23	they put m	e back to the car and took me in th	e car.
24	Q	Who was in the car?	
25	A	Edward and another guy was driving	g the car.

- 11	
1	rdlt Thomas-direct 100
2	Q Edward who?
3	Λ My helper, Jermott.
4	Q And where were you seated?
5	A I was sitting directly behind the driver in the
6	car.
7	O Where was Mr. Jermott seated?
8	A Sitting on the opposite side.
9	Q Who else was in the car?
10	A There was one other guy, the driver of the car
11 .	wasin the car.
12	Q Who else?
13	A Well, after I got in the car, when he brought me
14	back to the car, then me and Mr. Lynch got in the car, too.
15	Q Where was Mr. Lynch seated?
16	A Sitting in the front on the righthand side.
17	Q On the passenger side?
18	A Right.
19	Q Had you ever seen the person who got into the
20	driver's seat of that Nova before?
21	A I didn't see him before, but I saw some pictures.
22	Q What do you recall about the man who was driving
23	the car that night?
24	A Well, he was short. I would say that he was
25	approximately 5'5, 4 inches, something like that, and he weighed

1	rdlt Thomas-direct 101
2	about 165, 170 pounds with reddish-brown hair.
3 -	Q What was he wearing, if you remember?
4	A He had on a brown cap and a brown jacket. That's
5	as far as I can recall.
6	Q Do you see the man who was driving the red Chevro-
7	let in this courtroom?
8	A No, I don't.
9	O Are you sure?
10	A Yes.
11	O Do you see anyone who looks like the man who was
12	driving the red Chevrolet?
13	MR. SIEGAL: I object to the suggestions.
14	THE COURT: Overruled.
15	Q Do you see anyone who looks like the man who was
16	driving the red Chevrolet?
17	A Well, he looks a little like the guy, but I can't
18	Say 101 Sales
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21	Chac he zhaza
22	the defendant howers,
23	Q Mr. Thomas, you had previously been shown a spread
24	of photographs, is that correct?
25	A Yes.

11 .

Ö	I am now showing you what has previously been
marked as	Government's Exhibit 3 for identification and ask if
you see a	man who looks like the driver in this spread of photo-
graphs.	

MR. SIEGAL: I object to that question, if your Honor please. It is merely bolstering something that looks like something.

THE COURT: Sustained at this point. Suggestive right on its face.

O Do you see the driver of the car in that spread of photos?

- A Number 4 looks like the driver of the car.
- Q . Number 4 looks like the driver?
- A Yes.

MR. SIEGAL: May we look at that for a second, please?

MR. PEDOWITZ: Yes.

(Pause.)

MR. PEDOWITZ: Your Honor, we previously had a stipulation from counsel that number 4 is indeed a picture of Mr. McNally. I would now offer this spread of photographs into evidence.

MR. SIEGAL: I object to that, your Honor. I am getting brought into this picture. I conceded that is a

1	rdlt Thomas-direct 103
2	picture of this man, McNally. I don't concede that that is
3	the picture of someone who he thinks looks like McNally.
4	THE COURT: We will take it as a picture of the
5	man McNally. Whether this is the one that this witness saw
6	is for the jury to decide based on all the evidence.
7	MR. PEDOWITZ: I would offer it in evidence.
8	THE COURT: Received.
9	(Government's Exhibit 3 received in evidence.)
10	MR. PEDOWITZ: I would request this be passed
11 :	among the jury.
12	THE COURT: All right.
13	Q Mr. Thomas, you were previously shown a spread of
14	photographs and also asked whether you saw the driver of the
15	Chevy in that spread of photographs, is that correct?
16	A Yes.
17	O Do you remember when that was that you were shown
18	those photographs?
19	A October 9, 1974.
20	Q How many days was it after the hijacking?
21	A Three days later.
22	O' Three days after the hijacking?

Q That would have been September 9, 1974.

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Yes.

Right.

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Q MR. Thomas, directing your attention to November 12, 1974, did you attend a line-up?

A Yes, I did.

Q And you were unable to identify the driver of the Chevrolet at that time, is that correct?

A Yes.

MR. SIEGAL: I think we ought to allow the witness to testify to a material part of this case.

THE COURT: Sustained. Don't lead the witness.

MR. PEDOWITZ: Yes, your Honor.

Q Were you able to identify anybody at that line-up?

A No, I didn't.'

Ω Have you been told that Mr. McNally was in that line-up?

A Later I was told he was.

Q Now, Mr. Thomas, returning the evening of September 6, 1974, and I will ask you to keep your voice up again, what happened after you got into the red Chevrolet with Mr. Lynch and the man you have identified through the photo spread as Mr. McNally?

A Well, we got on the Pike, we went up to Exit 15.

We made a complete circle-. Then we came back on the Pike, heade north. We came down to like the Lincoln Tunnel, we pulled in the service area and gassed up.

2	-	

Q After you gassed up, after getting of the turnpike, what happened them?

A Turned back around and got back on the Pike and went up to Exit 12 on the Pike and we got off and pulled into a service area, to a shopping center.

Q Mr. Thomas, coming back just for a moment, was there any time when you saw the truck again, your truck after you had gotten into the Chevrolet?

A Yes. The truck pulled off behind us. After we made the turn coming back north on the Pike, the truck went on south.

Q Now, after you had stopped for gas and arrived at this shopping center, what happened then?

A After we get back to pull into the shopping center, they went and got some beer and asked if we want anything to eat and they bought a bottle of whiskey. They drank the whiskey -- the beer, and me and my helper, we drunk the whiskey. Then we sat there for a while.

Q Mr. Thomas, I think you are going a little too fast for the jury.

May I repeat the question?

THE COURT: Yes.

Q I will ask you to speak slowly and speak loudly.
What happened after you arrived at the shopping center.

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They pulled into the shopping center. The driver A of the car, he got out. He went in, he got some beer and he got a bottle of whiskey. He get back into the car, we sitting there so I myself and my helper, we drunk the whiskey and they drunk the beer.

They asked us if we want anything to eat and we said no.

After you had this whiskey, what, if anything, happened then?

A Well, we stayed there at the shopping center for a while. Then we come back out to Exit 12, just before you get on the Pike and there's a Howard Johnson Motor Lodger there so we sat there for a few minutes.

Q After you sat at the Howard Johnson's Motor Lodge for a few minutes, what happened then?

A They told us don't look back because another car was coming going to pick the guys up. So we set there and we did as they said. So when the car pulled up, Mr. Lynch got out the car, he got in that car. Then the other guy who was driving the Nova, he drove us back into New York City.

Now, after Lynch had gotten out of the car and McNally started to drive you again, what route did he follow?

A Come back on the Pike, he went up the Pike to the end to the George Washington Bridge. Then he come down

1	rdlt Thomas-direct/cross 107
2	the west side highway down to as far as he could come. Then
3	we come down West Street down to the World Trade Center. He
4	turned over and went over to Broadway and took us back up to
5	Broadway and 14th Street and let us off there.
6	Q What happened when you were left off at 14th
7	Street?
8	A He told us to get in the subway station and don't
9	look back.
10	Q Did you do that?
11	A Yes, we did.
12	Q Now, during that day, what, if anything, had Mr.
13	Lynch or the man you identified through the photo spread as
14	Mr. McNally said to you about looking at them?
15	A They told us don't look at them because you don't
16	want to know me.
17	Q Did either man wear a mask on that day?
18	A No, they did not.
19	MR. PEDOWITZ: No further questions, your Honor.
20	CROSS EXAMINATION
21	BY MR. SIEGAL:
22	O Mr. Thomas, when did this hijacking take place?
23	A On September 6th.
24	0 1974?
25	A '74.

	111
1	2 rdmch Thomas-cross
2	A It's two blocks over. Right on the waterfront.
3	Q On West Street?
4	A Yes, on West Street.
5	Q Is this near 14th Street?
6	A No. It's on the corner right there of Horatio.
7	It's two blocks from 14th Street.
8	Q Two blocks below 14th?
9	A Yes.
10	Q Below?
!1 .	A Yes.
12	Q Near the Old Bohemia?
13	A Right.
14	Q You know the Old Bohemia, do you not?
15	A Yes, I does.
16	Q You have been there many a time?
17	A Yes, I have.
18	Q Picked up meats there, haven't you?
19	A No. I just deliver there.
20	Q Deliver, one way or the other, I don't know.
21	But you have been there; right?
22	A Yes, I have.
23	Q On occasion, do you take your trailer-truck, when
24	you are either supposed to pick up, unload, whatever you
25	have to do, and park it in that area for hours at a time?

1	1 rdmch	Thomas-cross	127
2	Q	After you stayed there for an hou	er and a half
3	or whatev	ver it was, you had an opportunity	of seeing the
4	man with	the gun; isn't that correct?	
5	A	Yes, I saw him.	
6	Q	No question about that, either;	right?
7	Α	Yes, I saw him but I didn't take	a good look at
8	him then	because he told me, don't look at	him, and I don't
9	want to	know him.	
10	Q	During all this time you didn't	take a look at
11 ,	him?		
12	A	No.	
13		You wouldn't, either, looking do	wn a barrel of
14	a gun.		
15	Q	I'm glad you put me in your comp	any. I'm asking
16	you did	you take a good look at him?	
17	A	I didn't, and you wouldn't eithe	r.
18	Q	I'm now in your company.	
19		When for the first time did you	look at him?
20	Α	When did I take a good look at h	im? When he told
21	me to ge	t out of the truck to stretch our	legs; that's when
22	I did.		
23	Q	What time was this?	

About 5:00, 5:30.

Where was that?

24

1	5 rdmch	Thomas-cross	131
2	Λ	No, because it was dark.	
3	Q	Now it was dark. But you are sitting	in a car
4	with him?		
5	Α	Yes, and I was sitting direct behind h	nim. So
6	how much	can you see if you sitting directly beh	nind
7	someone?		
8	Q	You didn't see him?	
9	A	Only see the back.	
10	Q	Did you see him when he got into the	trailer?
11	A	He was in the car when I got in there	
12	Q	He was in the car?	
13	A	Yes.	
14	Q	So when you walked in you looked righ	t at his
15	face, di	dn't you?	
16	A	No, I didn't.	
17	Q	You didn't see him; all right.	
18		When were you released?	•
19	A	About 12:45 that night.	
20	Q	When did you report this hijacking?	
21	A	As soon as they released me I reporte	ed it.
22	Q	What time?	
23	A	Around 12:45.	
24	Q	You did that right then and there; r	ight?
25	A	As soon as I went down the subway sta	ation there
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that right?

A Yes.

Q You saw about six or seven or eight people on the lineup?

A Right.

Q Right?

A Right.

Q When was this?

A I think it was November 12th. It was about two months after the hijacking.

Q Did you identify anybody on the lineup?

A The first time I went down I didn't. The second time --

Q Pardon me. You are a little too fast for me.
I want to hear you.

What was that answer?

A I said no, the first time I went down I didn't identify anybody.

Q This was November 12th?

A I think on November 12th.

Q You did not identify anybody, right, on the lineup; correct?

A Correct.

MR. PEDOWITZ: Your Honor, I am going to object

Judge.

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because I think this is getting very confusing. That first lineup had nothing to do with this case.

MR. SIEGAL: I don't want any explanations,

THE COURT: I don't, either.

What is the basis, your evidentiary basis, not your argument?

MR. PEDOWITZ: Misstating facts already in evidence.

MR.SIEGAL: I'll put the question to him again.

- Did there come a time that you went to a lineup for the first time?
  - A Yes.
- You understand my question? Did you go into a dark room and look at a lineup of people standing there?
  - Yes, I did. A
  - Did you identify anybody then? 0
  - No, I didn't. A
- Regardless of what the date is, how many views, let us say -- you know what I mean, lineups, on that day did you look at?
  - A Two.
  - Two; right? Q
  - A Yes.

1	9 rdmch	Thomas-cross	135
2	0	Sir?	
3 .	λ	Yes, two.	
4	0	And at the first lineup there were how m	iany,
5	six or se	ven or eight people, something like that?	•
6	A	Five or six.	
7	Q	On the second there were six or seven or	eight
8	people?		
9	A	Yes, it was.	
10	Q	On that occasion you identified nobody;	is that
11	correct?		
12	A	On the first lineup I didn't identify n	
13	Q	Between the first lineup and the second	I
14	assume t	here was a second; right?	
15	A	Yes.	
16	Q	When was the second lineup in relation	to the
17	first li	ineup, how much later?	
18	A	About two weeks later.	
19		Between the first lineup and the second	
20	how many	y times were you over at the FBI headquar	ters?
21	A	I didn't go back between the lineups.	. Comment
22	Q	You never went back?	
23	A	No, not between the lineups.	
24		Is it your testimony that after the fi	
25	when yo	ou looked at two different lineups and you	i did not

And the second time I believe you started to sav,

Right.

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1	rdmch	Thomas-cross 137
2	just befor	re the recess, that you identified somebody?
3	A	Right.
4	Q	Right?
5	A	Yes, sir.
6	Q	And on the second occasion did you identify one
7	person or	two people?
8	A	Just one.
9	Q	What?
10	. A	One.
11	· Q	And you just identified one the second time?
12	A	Yes.
13	Q	The first time, none; right?
14	A	Right.
15	Q	And between the first and second time you say
16	you had	no conversations with anyone respecting the
17	identifi	cation?
18	A	No.
19		MR. SIEGAL: Thank you. No further questions.
20		MR. PEDOWITZ: No further questions of this
21	witness	, your Honor.
22		THE COURT: You are excused.
23		(Witness excused)
24	11	MR. GROSS: With the Court's permission, just before
25	the nex	t witness, I would like to read the second part

J. in .

1	rdlt 1 Jermott-direct	
2	EDWARD JERMOTT, called as a witness on	
3	behalf of the government, being first duly sworn, testified	
4	as follows:	
5	DIRECT EXAMINATION	
6	BY MR. PEDOWITZ:	
7	O Mr. Jermott, I will ask you to keep your voice up	
8	and to speak very slowly so that the last juror and Judge	
9	MacMahon will be able to hear you; okay?	
10	A Yes.	i
11	Q Mr. Jermott, by whom are you employed?	-
12	A Luther Thomas.	
13	Q And what capacity do you work for Luther Thomas?	1
14	A As a helper.	!
15	Q And were you also employed by Luther Thomas on	
16	September 6, 1974?	1
17	A Yes, I was.	!
18	Q Directing your attention to that date, September 6	5
19	1974, did you pick up some meat at Midtown Packing Company?	1
20	A Yes.	
21	Q Where is Midtown Packing Company located?	
22	A 125th Street and 12th Avenue.	1
23	Q I'm sorry, could you repeat that?	!
24	A 125th Street and 12th Avenue in Harlem.	
25	Q Where were you to deliver meat that day?	

1	rdlt 2 Jermott-direct
2	A To Wake Fern, Elizabeth, New Jersey.
3	THE COURT: PLease keep your voice up.
4	MR. PEDOWITZ: Would you like that answer repeated
5	your Honor?
6	THE COURT: No.
7	Q Who were you working with on September 6, 1974?
8	A Luther Thomas.
9	Ω Please tell the Court and the jury what happened
10	on your way that afternoon to New Jersey with the meat?
11	A Well, we was riding down 9th Avenue. Luther
12	Thomas was going to pick up his pay. We stopped at a red
13	light on 9th Avenue when a man opened my side of the door
14	Q What happened when that man opened the door?
15	A He said "I have a 38. Do you know what a 38 is?"
16	And he showed it to me.
17	Q What happened then?
18	A I slid over and he got in.
19	Q What was the man holding, if anything?
20	A He was holding a gun.
21	
22	A It was blue steel with a brown handle.
23	Q What type of gun was it?
24	A It was a 38.
25	Q Was it a revolver?

1	rdlt 3	Jermott-direct
2	A	Yes.
3		
	Q	Had you ever seen a similar gun before?
4	Ą	I have seen quite a few of them.
5	Q	Where have you seen guns like that before?
6	A	From my cousins and uncles who are police officers
7	in New Jers	ey.
8	0	Are guns a hobby of yours?
9	Λ	Yes, it is.
10	Q	For how long have guns been a hobby of yours?
11	A	About eight or ten years.
12	Q	What, if anything, could you tell about whether or
13		was loaded?
14		
15	Α	I have seen the bullets in the cylinder.
16	Q	Whatdo you recall about the appearance of the man
	who had the	gun and got into the truck? How tall was he?
17	λ	About a little taller than me.
18	Q	How tall is that?
19	A	I'm 5'8.
20	Q	And what did he weigh, approximately?
21	A	About 170 pounds.
22	Q	And how old was he, approximately?
23	A	ABout 40, 45.
24	Q	And what color hair did he have, if you remember?
25		Black and grey hair.
		bruck and grey natt.

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1	rdlt 4 Jermott-direct
2	Q Do you see the man who stopped you on 9th Avenue
3	and 34th STreet here in this courtroom?
4	A Yes, I do.
5	Q Could you please point him out?
6	A The man sitting in the brown green suit.
7	MR. PEDOWITZ: May the record reflect the witness
8	has identified John Lynch, the defendant?
9	THE COURT: Yes.
10	Q Are you sure about that?
11	A Yes, sir, I am.
12	Q Now, directing your attention to November 12, 1974
13	did you attend a line-up in which the man you just identified
14	was present?
15	A Yes, I did.
16	Q Did you identify him at that time?
17	A No, I did not.
18	Q Why didn't you identify him at that time?
19	MR. SIEGAL: I object to it.
20	THE COURT: Sustained.
21	Q Where did this line-up take place?
22	A At FBI Headquarters.
23	Q Mr. Jermott, I am showing you a picture previously
24	received in evidence as Exhibit number 1, Government's Exhibit
25	number 1. Would you tell us, does this appear to you to be a

1	rdlt 5	Jermott-direct
2	picture of	the line-up you viewed on November 12, 1974?
3	A	Yes, it is.
4	Q	Do you recognize anyone in that photo?
5		MR. SIEGAL: One second, please. November 12th?
6		MR. PEDOWITZ: November 12, 1974.
7		MR. SIEGEL: I object to the form of the question,
8	if your Hone	or please. The question is whether or not he
9	recognizes l	him today or did he recognize him on the line-up on
10	November 12	th?
11		THE COURT: Fix the time.
12	Q ·	On November 12, 1974, is that a picture of the
13	line-up which	ch you viewed on November 12, 1974?
14	A	Yes.
15	Q	At that time did you recognize anyone?
16	A	Yes, I did.
17	Q	Who did you recognize at that time?
18	Α	This man right here, number 4.
19	Q	Number 4?
20		MR. PEDOWITZ: Your Honor, we will offer the
21	picture has	already been received in evidence. We would like
22	the jury to	view it.
23		However, T think Mr. Siegal will concede, as he
24	did before,	that number 4 is a picture of Mr. Lynch.
25		MR. SIEGAL: I have already conceded that There i

In the back.

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1	rdlt 13 Jermott-direct
2	Q And did there come a time when Mr. Thomas and
3	Mr. Lynch came to the car?
4	A Yes.
5	Q What did they do?
6	A Luther Thomas got in on the left side, sat there
7	in the back seat on the left side. Mr. Lynch got in the
8	front with the driver of the car.
9	Q What time was this, approximately, when you were
10	put into the car?
11	A I don't have no idea. It was dark. That's all
12	I can say.
13	Q It was dark out?
14	A Yes.
15	Q Now, Mr. Jermott, do you see the man who was
16	driving the red car that night in this courtroom?
17	A I can't be sure.
18	Q You can't be sure?
19	A No.
20	Q Do you see somebody who you think it might be?
21	MR. SIEGAL: I object to that.
22	THE COURT: Sustained.
23	Q Mr. Jermott, is there anyone in this courtroom
24	whom you might have seen before?
25	MR. SIEGAL: I object to that, if your Honor

1	rdlt 14 Jermott-direct
2	please. It is a very vague question.
3	THE COURT: Sustained.
4	Q Mr. Jermott, I am now showing you what has
5	previously been marked as Government's Exhibit 3, received
6	in evidence.
7	And I ask you if you see the driver of that red
8	Chevy Nova in that group of photographs?
9	A This is the picture that I had picked out.
10	Q You previously selected that photograph?
11	A Yes.
12	Q Who is that man?
13	A He looks like the driver of that car.
14	Q And what number is that?
15	a Number 4.
16	MR. SIEGAL: If your Honor please, I move to
17	strike out the answer.
18	THE COURT: Overruled.
19	Q Mr. Jermott, you were previously shown a group
20	of photographs and asked if you could identify the driver;
21	is that correct?
22	A Yes.
23	Q Did you select a photo?
24	A Of the driver?
25	Q Yes.

1	rdlt 15	Jermott-direct
2	Α	Yes, I did.
3	Q	And did it appear to you to be the same photo
4	that you ha	we selected today?
5	A	Yes.
6	Q	Now, Mr. Jermott, you previously testified to
7	having seen	a line-up on November 12, 1974, in which you say
8	the defenda	nt, Mr. Lynch, but did not identify him.
9	A	Yes, that's true.
10	Q	Now, on that same date, November 12, 1974, did
11	you attend	another line-up?
12	A-	Yes, I did.
13	Q	Did you see anyone in that line-up whom you
14	thought was	the driver of the car?
15	A	Yes, I did.
16		MR. SIEGAL: I object
17		THE COURT: Sustained.
18	Q	Did you see the driver of the car in that line-
19	up?	
20	A	Yes, I did.
21	Q	What did you tell the people who were attending
22	the line-up	?
23	A	Nothing.
24		MR. PEDOWITZ: Lassume if I ask why, your
25	Honor, the	re will be the same objection and it will be

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THE COURT: I don't rule in advance. We do learn by trial and error. That's what trial and error is, trials and errors. So does a trial judge.

Q Mr. Jermott, why didn't you pick him out?

MR. SIEGAL: Objection.

THE COURT: Sustained.

MR. PEDOWITZ: I have now learned, your Honor.

THE COURT: The best teacher is your opponent.

Q Mr. Jermott, I show you a photograph which is marked as Government's Exhibit 6 for identification. I ask you if you see the driver of the red Chevy Nova in that picture.

A The man I believe to be the driver is right here.

Q What number is he?

A Number 6.

Q Does that picture appear to you to be a picture of the line-up that you saw on November 12, 1974?

A Yes.

MR. PEDOWITZ: I offer this picture into evidence.

MR. SIEGAL: I object to it.

THE COURT: What is the basis?

MR. SIEGAL: He said he "believes" it to be.

He did not positively identify it.

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He said he "believes" it.

MR. PEDOWITZ: Your Honor, that's all a man can be expected to do.

MR. SIEGAL: I object to that argument.

THE COURT: Please don't argue.

May I have the witness' answer read?

(Answer read.)

THE COURT: Overruled.

Mr. Jermott, is this a picture of the line-up which you saw on November 12, 1974?

MR. SIEGAL: I object to it.

THE COURT: Sustained. It's repetitive.

MR. PEDOWITZ: I'm. sorry, your Honor?

THE COURT: It is repetitive.

MR. PEDOWITZ: Your Honor, may I offer this picture again into evidence?

THE COURT: You do what you want. I only rule. I don't give permission in advance. Did you ever watch a baseball game? You don't say to the umpire, "IS this a ball or a strike," before the ball is pitched. The same thing applies here.

MR. PEDOWITZ: I offer the picture in evidence.

MR. SIEGAL: May I have the question read back?

THE COURT: The one I just asked to have read

back?

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MR. SIEGAL: Yes. I don't know if this is the

same one or he slipped another one.

THE COURT: All right.

(Question read.)

MR. SIEGAL: No objection to that.

THE COURT: Received. Proceed.

(Government's Exhibit 6, received in evidence.)

Q Now, Mr. Jermott, do you see the driver in that picture?

A Yes.

Q What number is he?

A Number 6.

MR. PEDOWITZ: May this be shown to the jury,

your Honor?

THE COURT: Has that already been seen by the

jury?

MR. PEDOWITZ: No.

THE COURT: All right.

Q On November 6, 1974, what happened after the four of you, Mr. Lynch, the man you have identified from the line-up photo as Mr. McNally, Mr. Thomas and yourself got into the red car?

A We rode around and we passed Rahway State

- 11	
1	rdlt 18A Jermott-direct
2	Penitentiary and then from there Mr. Lynch got some beer.
3	Q Did you see the truck again that night?
4	A Yes, it was passing us as we was coming the
5	opposite way.
6	Q Now, where did you go first in the red Chevy
7	Nova?
8	A We just went to get some gas. After that we rod
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10	around.
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### Jermot/Direct

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- Q And where did you end up?
- A And we went to this shopping area.
- Q And what happened when you got to the shopping
- A Well, we was asked if we wanted some Chinese egg roll.
  - Q And what happened then?
  - A And the driver got out and got some beer.
  - Q Did you get anything else?
  - A And Chinese egg roll.
  - Q What happened after that?
- A And they asked us if we want anything to drink and we said, yes, and they brought us some pints of vodka.
- Q What happened after this vodka and beer was brought to the car?
  - A We drank it.
- Q After you had had your vodka? By the way, who drank the beer?
  - A Lynch.
  - Q What happened after Mr. Lynch had had his beer?
  - A And we was -- we went to a morot inn. And Mr.
- Lynch got out the car and was doing something to the back, I don't know what it was, it was a tapping sound.
  - Q What happened after you heard this tapping sound?

## Jermot/Direct n pm 2 A He told us not to look around. 2 And what happened then? Q 3 A He came back to the car and he put something in the glove compartment. 5 6 Q And after he had put it in the glove compartment . 7 what happened then? 8 A He told us again not to look at the driver of 9 the car and don't look around, and he left. 10 After Mr. Lynch had left, what happened then? 11 A Well, we drove to New York City and rode around 12 in the city. And after that we was put off on 14th Street 13 and Union Square. 14 Q What happened at 14th Street and Union Square? A And the driver of the car told us not to look 15 16 but both of us would know we looked anyway. 17 Q Where did you go? A We went down into the subway. 18 19 20 questions.

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MR . PEDOWITZ: Your Honour, I have no further THE COURT: Crossexamination. CROSSEXAMINATION BY MR. SIEGAL: Q Mr. Jermot, you know Mr. Luther Thomas quite a while?

1		Jermot/Cross
2	A	Yes, I do.
3	. Q	You lived together?
4	Α	No.
5	Q	Same house?
6	A	No.
7	Q	Where do you live?
8	A	I live at 4950 Stanton Street.
9	Q	Where is that?
10	A	Right off of Allen Street in New York City.
11	Q	Where does he live?
12	A	Beg pardon?
13	Ω	Where does he live?
14	A	Luther Thomas lives 151 Belmont Street.
15	Q	You visit with him, do you, from time to time?
16	A	Yes.
17	Q	And he visits with you?
18	A	Yes.
. 19		MR. SIEGAL: May I have that lineup picture,
20	please?	
21		MR. PEDOWITZ: Which one?
22		THE CLERK: Mr. Siegal (handing).
23	Q	There isn't any question, is there, that you
24	appeared	at two lineups at the FBI headquarters?

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Yes.

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- 2 Q No question about that, is there?
  - A No.
    - Q And no question that on one of the lineups they had a man named Mc Nally standing up there?
      - A Yes.
      - Q Isn't that correct?
      - A Yes.
    - Q And on another occasion, or the same day, perhaps, they had a man named Lynch standing at the lineup; right?
      - A That was a different lineup.
    - Q Yes. Now, there was a first time that you went to a lineup; correct?
      - A Yes.
    - Q And you were standing there in sort of a darkroom and looked through the window at the lineup; correct?
      - A Yes.
        - O Did you identify anybody on that day?
    - A Not on the first lineup, no.
      - O How mzny lineups on that first day did you look at?
        - A Just one.
      - Q Just one. Didn't identify anybody, did you?
- 25 A No.

### Jermot/Cross

- O The second lineup, when was that?
- A I can't give you the date.
  - Q Any idea?
  - A I don't know.
  - Q Well, at any rate, in point of time on the first lineup you identified nobody; correct?
  - A Correct.

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- Q Subsequently, regardless of what the date is, you had another lineup and then you identified somebody; right?
  - A Yes.
- Q And on the second lineup did you identify one or two people?

MR. PEDOWITZ: Your Honour, I will object, because I think it is misstating facts. We have already
established that he did not -- he saw somebody he knew, but
he did not identify.

THE COURT: Put your question.

- Q Did you identify anybody on the second lineup?
- A No, I did not.
- Q All right.

Now, you recall, do you not, Mr. Jermot --

THE COURT: Did you recognize anybody on the

25 second lineup?

			102
cam	6	1	Jermot/Cross
		2	THE WITNESS: I recognized them, yes.
		3	Q But you identified nobody; is that right?
		4	A I told them
		5	THE COURT: Who did you recognize?
		6	THE WITNESS: The first time I recognized Mr.
		7	Lynch.
		8	THE COURT: Who did you recognize the second
		9	time?
		10	THE WITNESS: The second time I recotnized this
		11	man right here (indicating).
		12	THE COURT: Pointing to Mr. Mc Nally.
		13	Q When you made these recognitions and the failure
		14	to identify, were you in the FBI headquarters?
		15	A Yes, I was.
		16	Q Were you brought there by FBI people?
		17	A Yes, I was.
		18	Q Were you taken out of the identification room
		19	by FBI people?
		20	A Yes, I was.
		21	Q Were you taken out of the building by FBI people?
		22	A Yes, I was.
		23	Q All right. Is that right?
		24	A Yes.
	•	25	Q Between the first time you went there for the
			for a lineup and the second time, had you talked to any FBI  84  SOUTHERN DISTRICT COURT REPORTERS. U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. CO 7-4550

			163
am	7	1	Jermot/Cross
		2	people?
		3	A The question is pertaining to the hijacking.
		4	No, sir.
		5	Q Yes.
		6	How many times would you say you talked to the
		7	FBI people between the first time and the second time
		8	you went for the lineups?
		9	A About three times.
		10	Q And they discussed identification with you?
		11	A No, they did not.
		12	Ω Discussed this case with you?
		13	A No.
		14	Q Just talked
		15	A Just getting information, that's all.
		16	Q Asked you questions?
		17	A Yes.
		18	Q You gave them answers?
		19	A Yes.
		20	O Do you recall testifying before the grand jury
		21	in this case?

jury

Yes.

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I am referring to 3513. A few days after the hijacking --

MR. GROSS: What page?

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### Jermot/Cross

MR. PEDOWITZ: Page, please.

MR. SIEGAL: 3513, page 13.

- Q A few days after this hijacking did there come a time that you were shown a spread of pictures?
  - A A few days?
  - Q Yes.
  - A It was longer than a few days.
- Q Well, how soon after the jijacking were you shown some pictures?
  - A Must have been about a week.
  - Q All right, a week. Were you shown some pictures?
  - A Yes.
- Q Were you asked this question and did you give this answer: "QUESTION: "Page 13 "QUESTION: A few days after this taking of your truck were you shown the spread of photos and asked if you recotnized anybody?"

And did you give this answer: "Yes"? Do you remember that answer to that question?

- A Yes.
- Q Do you remember this question: "And did you pick somebody out of that group of photos?", and you gave the answer "Yes". Do you remember that?
  - A Yes.
  - Q Do you remember this question: "And did you

### Jermot/Cross

identify him as the man who had been driving the car".

Do you remember that question? And did you give this

answer, "Not me, I didn't." Do you remember that?

A Yes.

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Q Do you remember this question and this answer: "QUESTION: You didn't pick him out? ANSWER: No."

Do you remember giving that answer to that question before the grand jury?

A Yes.

Q Do you remember this question, page 13: "Mr. Jermot, I am now going to show you a series of photographs previously marked as grand jurh exhigit 2-A through 2-H. I am going to ask you if you recognize anybody in this group of photographs." And you gave this answer: "This man right here."

Did you give that answer to the question?

A Yes.

Q All right. Were you asked this question: "QUESTION: And who is this man?

"ANSWER: I don't know his name."

Do you remember that answer to that question?

A Yes.

Q "QUESTION: Where have you seen him before?
"ANSWER: What?" Do you remember: that?

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1	Jermot/cross
2	A I don't remember that. I don't remember saying
3	that.
4	Q Do you remember this question: "Where have you
5	seen him before?
6	"ANSWER: When he entered our truck."
7	Do you remember giving that answer to that question?

"QUESTION: When he entered your truck?" And

Did you give that answer to that question?

Yes.

you said, "Yes."

Yes.

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And he asked you this question: " Is he the mand that was driving the car? " And you answered, "No, no. It looks like he was the man that was driving the car." Is that the answer you gave?

Yes.

"QUESTION: He looks like the man that was driving the car? ANSWER: Driving the car, yes. But there's also, there's another guy that looked like him. I can only see but the side of his face."

Did you give that answer to that question?

A Yes.

"OUESTION: I understand that, but does that look the most like the man who was driving the car on that

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And you gave the answer, "Yes." Do you remember that?

- That; s correct.
- Giving the answer yes to that question; right?
- Yes.
- Were you asked this question: "I'm going to show you grand jury exhibit number w-A again and ask you, is this the man who was driving the car?" and you gave the answer -- or, did you give the answer, "ANSWER: Like I say, it looks like him. I cannot be sure."

Did you give that answer to that question?

- I did.
- "QUESTION: It looks like the man who was driving the car?

"ANSWER: Yes."

Did you give those answers to those questions?

- A Yes.
- When you gave those answers to those questions before the grand jury were they the truth?
  - Yes, they were.

MR. SIEGAL: No further questions.

RE-DIRECT EXAMINATION

BY MR. PEDOWITZ:

Q Mr. Jermot, on November 12th, 1974, you attended

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2 lineup; is that correct?

A Correct.

Q And you saw a man who you knew to be the man that had hijacked your truck on Ninth Avenue and 34th Street; is that correct?

A Yes.

O Did you identify him?

A No --

THE COURT: What do you mean, identify him?

Q Did you tell anyone at the lineup that that was the man who had hijacked your truck?

A I did not.

Q Why didn't you tell hem?

MR. SIEGAL: I object.

THE COURT: Sustained. Did you recognize him?

THE WITNESS: Yes, I did.

THE COURT: But you didn't tell him?

THE WITNESS: No.

MR. PEDOWITZ: No further questions, Your Honour.

MR. SIEGAL: No questions.

THE COURT: All right, we wil recess now until tomorrow morning at ten o'clock. Don't discuss the case with anyone. Don't let anyone discuss it with you. Good night.

. 1	rdlt Fillmore-direct 175
1	ralt Filmore areas
2	ALBERT E. FILLMORE, called as
3	a witness on behalf of the government, being first
4	duly sworn, testified as follows:
5	DIRECT EXAMINATION
6	BY MR. GROSS:
7	Q Good morning, Mr. Fillmore. What is your
8	occupation, sir?
9	A Truck driver.
10	Q What was your occupation on June 26, 1974?
11	A Truck driver.
12	Q Do you own and operate trucks?
13	A Yes.
14	Q And do you have a partner?
15	A Yes, I do.
16	Q Who is your partner?
17	A Gary Andrews.
18	Q Now, directing your attention to 11 o'clock in
19	the evening on June 26, 1974, were you working?
20	A Yes, I was.
21	Q With whom?
22	A Gary Andrews.
23	Q Approximately at 11 o'clock that night, what, if
24	anything, happened?
25	A Our truck was stopped at the corner of Hunts Poin

1	rdlt	Fillmore-direct 176
2	Avenue and	Bruckner Boulevard.
3 .	Q	And how was it stopped?
4	А	Well, I was in the sleeper, sleeping, and Gary
5	woke me up	and said we were being hijacked.
6	Q	And what, if anything, did you do?
7	A	Well, I was surprised. I put my head out of the
8	sleeper an	d I looked and I saw a man with a gun standing at the
9	window.	
10	Q	What, if anything, did you as a result of that?
11	A	Well, I reached over and opened the door because
12	I was scar	red to death.
13	Q	Do you see that man in this courtroom?
14	A	Yes, I do.
15	0	Could you point him out, please?
16	A	This gentleman right here.
17		MR. GROSS: Your Honor, may the record indicate
18	that the w	ritness has identified the defendant Lynch?
19	Q	What kind of gun was he carrying, if you know?
20	λ	Well, it was a short, dark gun.
21	Q	Was it a revolver?
22	A	A revolver, yes.
23	Q	Now, did you see Lynch's face when he got in the
24	truck?	
25	A	Yes, I did.

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What, if anything, did Lynch say when he got in Q the truck?

After he got in the truck he told me to keep my head down or he'd blow my head off. Put the gun to my neck, my face.

- What, if anything, did Andrews do? Q
- He was scared --

MR. SIEGAL: I object to that. I will withdraw

it.

- Q What, if anything, did he do?
- Nothing. We just -- when that happened we all just A We didn't know what to do until he give us instrucstopped. tions.
- What were the instructions that Mr. Lynch gave Q you?
  - To follow a car that was in front of us . A
  - And did Mr. Andrews do that?
  - A Yes, he did.
  - Until approximately what point? Q
  - We went about three blocks. A
    - And what, if anything, occurred there? Q
- Well, I was told to get out of the truck with A the man with the gun and wait on the corner, and he stood there and then he told Gary to come down and follow him.

1	rdlt	Fillmore-direct 178
2	Q	Did you go to the corner with Mr. Lynch?
3	A	Oh, yes.
4	Ω	And did Mr. Audrews later join you on the corner?
5	A	Yes.
6	Q	What happened at that point?
7	A Then we were told to get into a car.	
8	Q	And
9	A	Put our heads between our legs.
10	Q	Did you get in the car?
11	A	Yes, we did.
12	Q	What part of the car did you and Mr. Andrews get
13	into?	
14	A	The back seat.
15	Q	And what part of the car did Mr. Lynch get into?
16	A	He was in the front seat, next to the driver.
17	Q	Was there anyone else there was someone else in
18	the car?	
19	A	Yes, there was.
20	Q	Do you see the man who was driving the car in
21	this courtr	oom this morning?
22	λ	Yes, I do.
23	Q	Would you point him out, please?
24	A	This gentleman right here.
25		MR. GROSS: May the record reflect that the witness

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has identified the defendant McNally, your Honor?

THE COURT: Yes.

Q After you and Mr. Andrews got into the car with Mr. Lynch and Mr. McNally, did you have a conversation with him?

A Well, they had stopped for beer and gas. There wasn't much conversation. We had to keep our heads down.

Q And when they stopped for beer and gas did anything result, did anything occur as a result of that?

A No. They had given us a beer.

Q Now, after they gave you a beer, what, if anything happened?

A Well, we rode around for approximately another -about an hour, forty-five minutes, and they wanted to make a
phone call. Gary had to go to the bathroom, so they decided
to stop, I guess, at a bar.

Q Did Mr. Andrews and Mr. Lynch leave the automobile?

A Yes, they did.

Q And did there come a time when Mr. Andrews and Mr. Lynch came back to the automobile?

A Yes. They come back and they told for me to come back into the bar with the driver.

Q Did you go into the bar with the driver?

A Yes, I did.

1	rdlt	Fillmore-direct 180
2	Ω .	How many of you went into the bar?
3	A	There was the four of us.
4	Q	You, Mr. Andrews, Mr. Lynch and Mr. McNally?
5	A	Yes.
6	Q	Where did you sit in the bar?
7	A	We took a back booth at the bar and I sat across
8	from the ge	ntleman with the gun and Gary, and the driver, sat
9	at the bar.	
10	Q	Now, how long would you say you remained at the
11	bar?	
12	A	About an hour.
13	Q	Where did Mr. Lynch have his gun at that time, if
14	you know?	
15	A	Under the table in his coat.
16	Ω	And how was he holding it, down?
17	A	He had it pointed. He kept moving it around. Once
18	in a while	he would touch our leg with it.
19	Ω	Did there come a time when you left the bar?
20	A	I went to the bathroom a few times and he
21	followed me	into the bathroom with the gun.
22	Q	After that approximately how long did the four
23	of you stay	in the bar?
24	A	I figure about an hour.
25	n	Did there come a time when the four of you left

1	4		9
1	rdlt	Fillmore-direct	181
2	the bar?		
3	λ	Yes, we did.	
4	O	Where, if anyplace, did you go?	
5	A	We proceeded to get back in the car an	d drive
6	around and	the gentleman with the gun decided he w	anted to
7	make anothe	er phone call. So when he made the phone	e call he got
8	back in and	he demanded our keys for the truck.	
9	Q	How did he demand it? What did he say	, if you
10	can recall:		
11	A	He made a statement such as he would h	olow our head
12	off if we	didn't give him the keys.	
13	Q	What was his tone at the time?	
14	A	By that time everybody was on edge.	He was pretty
15	angry.		
16	Q	And did you or Mr. Andrews give him to	he keys?
17	A	I did, I gave him the keys.	
18	Q	And what happened after that?	
19	A	Well, we went to another corner and h	e got out and
20	another ge	ntleman got in, and then we proceeded t	o ride around
21	again.		
22	Q	Did Mr. Lynch leave the car?	
23	A	Yes, he did.	
24	Q	So you were riding around with Mr. Mc	Nally and

another man whom you cannot identify?

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Q Now, Mr. Fillmore, directing your attention to August 5, 1974, did there come a time when you viewed photographs at the Federal Bureau of Investigation?

- A Yes, I did.
- Q What procedure was used, do you recall?
- A Well, we were showed an assortment of albums that you finger through at your leisure.
- Q How many pictures would you say, approximately, were in the albums?
  - A About five hundred -- figure five hundred.
- Q I show you what has been premarked as Government's Exhibit 11 for today. Do you recognize that photograph?
  - A Yes, sir.
  - Q Can you tell us when you first saw that photograph?
  - A When I went to view them albums.
- Q What if anything did you say when you saw that photograph?
- A Well, I believe that to be the person who came in with the gun.
- MR. GROSS: Your Honor, we will stipulated that this is a photograph of Kono Santoro, and have no objection to offering it in evidence.

MR. SIEGAL: No objection.

THE COURT: Received.

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(Government's Exhibit 11 received in evidence.)

Q Directing your attention to August 19, 1974, were you working?

- A Yes, I was.
- Q What were you doing that day?
- A We had just finished loading in the city and we were coming back to Connecticut with our load.
  - O ABout what time was that?
  - A Between 8 and 9 o'clock at night.
  - Q Where were you?
- A At the New Rochelle toll station northbound on 95, Interstate 95.
  - What, if anything, happened at that location?
- A I had paid my toll and I had pulled my truck over to the side to wait for Gary, who was coming out of the city, and I had another truck with me, and he pulled up behind me and I got out of the driver's side and walked back to see the driver and as I did, I saw the same man that had the gun the night that took us run between the two trucks with his gun out, and when he saw me he started after me and I run out in the middle of the turnpike.
- Q You say the same man who had taken you before. What date are you referring to?
  - A To the time we got hijacked, in June.

1	mdlt	Fillmore-direct 185
2	Q	On June the 26th?
3	. A	Yes.
4	Q	In other words, the man you saw on August 19th
5	was the sam	ne man who had hijacked you on June 26th?
6	λ	Yes.
7	Q	Do you see that man in court?
8	<b>A</b>	Yes, I do.
9	Q	Will you point him out?
10	λ	That gentleman (indicating).
11		MR. GROSS: May the record reflect the witness has
12	adentified	the defendant Lynch?
13		THE COURT: Yes.
14	0	How close did you get to Mr. Lynch on August 19th?
15	A	Well, we were about seven or eight feet apart, and
16	then as he	approached me I was stunned, I just turned and run
17	blindly ou	it in the middle of the turnpike.
18	O	Did you see his face?
19	A	Yes.
20	0	At what point?
21	A	As soon as I saw the side profile and hat and
22	jacket he	had on
23	Q	You took off?
24	A	Believe me, I took off.
25	0	I show you what's been marked Court's Exhibit 2

1	mdlt Fillmore-direct 186
2	MR. GROSS: Excuse me, your Honor, I will withdraw
3	that.
4	O Did you report this to the Federal Bureau of
5	Investigation?
6	A Yes, I immediately run into the toll station and
7	called the FBT.
8	Q As a result of that, did you ask to go back to
9	FBI
10	MR. SIEGAL: I object to all this leading.
11	THE COURT: Sustained.
12	Q What did you do if anything, as a result of seeing
13	Mr. Lynch?
14	A After I talked to the FBI agents I wanted to come
15	down and review the pictures, and when I did I come up with
16	this photo.
17	Q When you went back to FBI Headquarters, what did
18	you do? What procedure was followed?
19	A Well, I went back and sat and viewed the same
20	albums again. The only thing that made it I had seen the
21	man twice.
22	O Did anyone tell you to pick out any specific
23	photograph?
24	A No.
25	Q Or indicate any photograph at all?

1	mdlt Fillmore-direct 188
2	Mr. Siegal and have it marked in evidence.
3	I think Mr. Siegal stipulated, your Honor, that
4	that is a photograph of Mr. Lynch.
5	(Pause.)
6	Temporarily, your Honor, I will withdraw the offer.
7	THE COURT: All right.
8	MR. GROSS: I believe Mr. Siegal does stipulate
9	it was Mr. Lynch.
10	MR. SIEGAL: No question about it. You can't
11	mistake that face.
12	THE COURT: All right.
13	Q Mr. Fillmore, have you identified Mr.Lynch in a
14	line-up?
15	A Yes, I have.
16	Q Where?
17	A At the FBI building.
18	Q Will you tell the jury how that line-up took place?
19	A We were kept in a certain room and we were led
20	down a hallway into a corridor into a small room where they had
21	a little viewing box, which we looked into. There was approxi-
22	mately eight people in the room.
23	Q Were you led separately into that room?
24	A Yes.
25	Q So that at one time you were the only person looking

1	mdlt	Fillmore-direct 189
2	through the wi	ndow?
3	A Ye	es, I was the only one looking through.
4	Q Di	d you recognize anyone?
5	A Ye	es, I did.
6	Q WI	no?
7	A We	ell, the two different times they were Mr.
8	Lynch and the	driver.
9	Q I	place before you, Mr. Fillmore, what's been
10	premarked as	Government's Exhibit 13. Do you recognize it?
11	A Y	es, I do.
12	Q De	oes it appear to depict the line-up as you
13	viewed it on	November 12, 1974?
14	A Y	es, it was.
15	Q W	hat person did you pick out in thatline-up, what
16	number?	
17	A N	umber 1.
18	м	R. GROSS: Your Honor, 1 offer Government's
19	Exhibit 13 in	to evidence, and I am showing it to Mr. Siegal.
20	м	R. SIEGAL: No objection.
21	м	R. GROSS: I believe Mr. Siegal stipulated Mr.
22	Lynch is numb	
23	M	R. SIEGAL: Number 1 on the left of the picture.

that Mr. Fillmore identified.

25

MR. GROSS: And this is a picture of the line-up

1	mdlt Fillmore-direct 190
2	THE COURT: All right.
3	MR. SIEGAL: Is there a date on it?
4	MR. GROSS: Yes. November 12, 1974.
5	(Government's Exhibit 13 received in evidence.)
6	MR. GROSS: May I pass it to the jury, your Honor?
7	THE COURT: Yes.
8	(Exhibit handed to the jury)
9	Q Directing your attention to November 12, 1974, did
10	there come a time when you identified Mr. McNally in the line-
11	up?
12	A Yes, I did.
13	O I show you what has been premarked as Government's
14	Exhibit 14, a photograph. Do you recognize it?
15	A Yes, I do.
16	Q Does it appear to depict the line-up as you viewed
17	it on excuse me, October 30, 1974?
18	A Yes.
19	Q Which man in the photograph did you identify at
20	the line-up as the driver of the car on June 26, 1974?
21	A Number 1.
22	MR. GROSS: Your Honor, I offer Government's
23	Exhibit 14 into evidence, and I am showing it to Mr. Siegal.

MR. SIEGAL: Defendant McNally is number 1 to the

left of the picture. No objection.

24

1	mdlt	Fillmore-direct/cross 191	
2	TI	HE COURT: Received.	
3	. (0	Government's Exhibit 14 received in evidence.)	,
4	M	R. GROSS: With the Court's permission, may I	
5	pass it around	d?	
6	TH	E COURT: Surely.	
7	(	Exhibit handed to the jury.)	
8	м	R. GROSS: I have no further questions of this	s
9	witness, your	Honor.	
10	CROSS EXAMINATION		
11	BY MR. SIEGAL		
12	Q M	r. Fillmore, how old are you?	
13	А Т	hirty-three.	
14	Q A	are you married?	
15	λ Υ	es.	
16	Q W	There do you live?	
17	λ Ε	East Brandy, Connecticut.	
18	Q I	o you own a truck or trucks?	
19	A 1	es.	
20	Q 1	In partnership with Gary Andrews?	
21	A 1	Yes, I am.	
22	Q 1	Have you got a trucking company of some sort?	
23	A 2	A corporation.	
24	Q	A corporation?	
25	Α :	Yes.	

*	*	*	*	*
••	-	-	-	-

1	mdlt 247
2	THE COURT: That's all I wanted to know.
3	(Jury present.)
4	THE COURT: Good afternoon.
5	Proceed, Mr. Siegal.
6	MR. SIEGAL: Thank you.
7	Mr. McNally, will you please be good enough to take
8	the stand?
9	KENNETH S. Mc NALLY, called as a
10	witness on behalf of the defendants, being first
11	duly sworn, testified as follows:
12	DIRECT EXAMINATION
13	BY MR. SIEGAL:
14	O Will you talk up, Mr. McNally, so we can all hear
15	you?
16	A Yes, sir.
17	Q How old are you, Mr. McNally?
18	A Forty-three.
19	Q Are you married or single?
20	A I have a common law wife.
21	Q Where do you live with her?
22	A 147-22 17th Avenue, Whitestone, Queens.
23	Q How long have you lived at that address?
24	A About four years.

1	mdlt	McNally-direct 248
2	Q	Talk up, please. You are lowering your voice.
3	A	Four years. Going on five.
4	Q	What schooling have you had?
5	A	Graduated high school.
6	Q	Where?
7	A	Rivine High School.
8	Q	Where was that?
9	A	In Queens.
10	Q	And have you served in the Army?
11	· A	Yes. I was in the Korean War.
12	Q	When and where?
13	A *	'52 to '54. I was on the front lines of Korea.
14	I fought t	he battle of Porkchop Hill.
15+	Q	Talk up and don't drop your voice, please.
16		What was the last think, Porkchop?
17	A	Right.
18	Q	What does that mean?
19	A	That was the hills we was fighting at. They made
20	a movie ou	t of it.
21	Q	I see.
22	2.3	In 1971, were you convicted of driving without
23	a license?	
24	A	Yes, I didn't have a license with me.
25	Q	Did you pay a fine? Were you ordered to pay a

1	mdlt	McNally-direct 249
2	fine?	
3 .	A	\$50.
4	Q	Are you a member of any union of any kind?
5	A	Elevator Constructors Local 1.
6	Q	Are you presently employed?
7	A	Yes.
8	ο ,	For whom?
9	A	Diesel Construction.
10	Q	Talk up.
11	A	Diesel Construction.
12	Q	Where are they located?
13	A	1211 Sixth Avenue, Avenue of the Americas.
14	Q	How long have you been with them, you say?
15	A	The last five years.
16	Q	What is your work?
17	A	I am in charge of getting the personnel from the
18	construction	on line up on the floors to do the construction work
19	in charge o	of elevators.
20	Q	And prior to Diesel, whom were you connected with?
21	A	I worked for Turner Construction, Tishman, I put
22	ten or elev	ven years in with Otis Elevator.
23	Q	How many years would you say that you are in this
24	line of wor	rk?
25	A	Twenty-four.

1	mdlt McNally-direct 250
2	Q What is your particular line of work?
3 .	A We take all the personnel and construction people
4	up to their floor so they can do their work. We run the ele-
5	vators for them.
6	Q Is this during the construction phase of the
7	building, is that what it is?
8	A Yes.
9	Q I see. And in the past, let's take a couple of
10,	years, the past two, three or four years, what's been your
11	average earnings?
12	A I make anywheres from 500 to 1,000 dollars a week.
13	Q 500 to what
14	A I have made in the past few years.
15	Q Of what?
16	A Dollars.
17	Q In what period?
18	A In the last five years.
19	THE COURT: 500 to 1,000 dollars, for how long?
20	THE WITNESS: I average \$25,000 a year.
21	Q And these concerns that you work for, do they
22	withhold?
23	A They take the taxes, sure.
24	Q And are you paid by Otis and all these others that
25	you have been working for by check?

1	mdlt	McNally-direct 251
2	A	Check.
3 .	Q	Did you also in 1963 have some sort of a business?
4	A	I owned a bar-restaurant-catering hall.
5	Q	Where was that?
6	A	In Queens.
7	Q	You see, you're dropping your voice.
8	A	In Queens.
9	Q	Have you still got that?
10	A	No, I sold it in 1963.
11	Q	At the time you had this bar and grill in Queens,
12	did you hav	e a liquor license?
13	A	Yes.
14	Q	In your name?
15	A	In my name alone.
16	Q	Do you know Jack Lynch?
17	A	I know him from high school.
18	Q	How long would that be?
19	A	Oh, I graduated high school in 1950. '47, '48,
20	'49.	4.
21	Q	Do you socialize with him?
22	A	Yes. Our families visit each other, I stop up
23	to see him	at work, we have lunch together, we have dinner
24	together.	
25	Q	Does your family visit his family?

1	mdlt	McNally-direct	252
2	A	Yes, and his children visit my home and	my
3 .	children vi	sit his.	
4	Q	You said you have had lunches with him	on
5	occasions.		
6	A	Yes.	
7	Q	How do you get together?	
8	A	Well, when he has a break on his job he	picks me
9	up with his	truck and we go to lunch.	
10 0		He drives a CBS truck.	
11	Q	And he picks you up?	
12	. A	Yes, because we can park the truck in f	ront of
13	a restauran	t. It is a commercial vehicle, so you c	an park a
14	truck, you	can't park cars in the city.	
15	Q	How long has he been picking you up in	a truck, a
16	CBS truck?		
17	A	Seven or eight years on and off.	
18	. Q	Have you visited him at his place?	
19	A	My children have been to CBS to go thro	ough the
20	studios.		
21	Q	Have you been there to visit him?	
22	* 4 /A	Yes, many times.	
23	Q	Does your family phone his family or hi	s family
24	phone you?		
	1		

res. The wives are friends.

1	mdlt McNally-direct 253	
2	Q I can't hear you.	
3 .	A The two wives are friends.	
4	Q I see. Has Jack Lynch ever picked you up with hi	8
5	truck for a purpose other than to go to lunch or something	
6	like that?	
7	A Yes. We go down the meat market, sometimes. We	
8	park the truck down there. I buy meat at the Old Bohemia Mea	t
9	Market. I have been buying there for years.	
10	Q Where is that located?	1
11	A 13th Street.	1
12	Q 13th Street and what?	;
13	A Between Washington and 12th AVenue, I believe, or	1
14	10th Avenue.	
15	Q For how many years have you been going down to th	e,
16	Old Bohemia?	1
17	A Six or seven years I must be going there.	
18	Q Do you have to buy wholesale, or is that retail?	1
19	A That's the reason for going there, you get a	!
20	cheaper price, and I also buy it for the job, like some of	
21	the men on the job want me to pick up a shell steak, I pick up	P
22	shell, whatever they want.	
23	Q For whom?	
24	A For people who work on my jobs.	
25	Q Is there a minimum that you have to buy when you	د به ط
- 11		

1	mdlt	McNally-direct	254
2	<b>A</b>	If you buy steaks, you have to buy the	whole
3	shell.		
4	Q	What does that mean in poundage, do you	know?
5	A	It runs anywhere from 18 to 22 pounds.	
6	Q	Have you some sort of an account?	
7	A	They know me there for years.	
8	Q	Do you ever buy meat there for the Lync	h's family?
9	A	Yes, sir, many times. That is the reas	on why he
10	takes me do	wn there, to get his meat.	
11	Q	How often would you say that you go dow	n co this
12	meat section	n of the city?	
13	· A	Well, every month or every two months.	It depends
14	on how fast	the kids eat the meat.	
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Q Any other places down in that you patronize for the purpose of buying meats or other products?

A I stop in the bars down there because we are waiting for the meats, so we stop in and have a drink or something, or maybe a sandwich.

Q I can't hear you.

A We stop in the bars all around there. There are three or four bars. Wherever we park we stop in one of them.

Q Any particular bars?

A Well, most of the time on Washington and 13th Street, there is a place where I go in and buy chickens.

Q Yes?

A I stop in that bar.

Q What bar is that?

A It's on the corner. I don't know what the name is. It's on the corner of 13th and Washington. The chicken place is right nextdoor.

I also go in another bar, the Anvil.

Where is that?

A That's on 14th and Tenth Avenue. They have topless dancers in there.

Q And you go in there when you are in the neighborhood to have a drink or something?

1	2 mdmch	McNally-direct
2	A	Yes.
3	Q	Does Lynch go with you?
4	A	Yes.
5	Q	Are these places frequented or patronized by
6	any parti	cular type of people?
7	A	Down there you get all people from the meat
8	market an	nd you get all the truck drivers. Whoever is
9		around goes in the bars. There's nothing else
100	to do.	
11	Q	You heard some people here on the stand this
12	week say	that on June 26, 1974, sometime around 11:00 p.m.,
13	you and	Lynch hijacked a truck.
14		Did you hear that testimony?
15	A	It's ridiculous.
16	Q	Did you hear it?
17	A	I heard it.
18	Q	Did that happen?
19	A	No.
20	Q	They talked about September 6, 1974, about
21	a hijac	king at 34th Street and Ninth Avenue, about 2:00
22	p.m.	
23		Did you participate in any such hijacking with
24	Lynch?	
25	A	I was at work. I don't have to I earn enough

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MR. SIEGAL: That's right.

the night of the 26th, I think it was.

I was in the Slate Restaurant, waiting to go to

		258
1	4 mdmch	McNally-direct
2	a party.	
3	Q	What time were you in the Slate Restaurant?
4	λ	I must have left there close to 12:00 o'clock
5	at night.	
6	O	Where was this party?
7	A	The party was in Queens.
8	Q	Where in Queens?
9	A	30th Avenue and 31st Street. It was a birthday
10	party.	
11	Q	A birthday party for whom?
12	A	A girl that worked for me at one time.
13	Q	And what was her name what is her name,
14	rather?	
15	A	Mrs. Seviro.
16	Q	Did you see her that night?
17	A	Yes, sir.
18	Q	About what time?
19	A	Oh, 12:30.
20	Q	Were there other people there at the party?
21	A	There was a lot of people at the party.
22	Q	Do you know how long you remained there that
23	night?	
24	A	It was after closing. It had to be about 5:00,
25	5:30, be	cause they closed up

1	5 mdmch McNally-direct
2	Q What time?
3	A It had to be like 5:00, 5:30.
4	Q Was this a private party for this young lady?
5	A No, it was open to the public.
6	Q Was this a party of friends or associates or
7	what? Who were invited there?
8	A Well, like her husband there, and all the people
9	she knows. She works at the place, and it was her
10	birthday, so they threw her a party where she works.
11	So it's like an open house for her.
12	Q Was this date by the way, where was the
13	party again?
14	A 30th Avenue and 31st Street in Queens.
15	Q What is the name of the place?
16	A Candlelight.
17	Q Was this date of June 26, 1974 her birthday?
18	A Her birthday was the Saturday after, but she
19	happened to be working that night, and they always have
20	the party on the night she's working so she winds up,
21	you know, whoever comes to see her brings her a gift.
22.	Q Was this party on the evening she was working,
23	is that what you said?
24	λ That's right.
95	O But her actual hirthday was on the Saturday?

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- A Yes, the coming Saturday. But she wasn't working that day.
- Q What time did you get home that night or morning?
  - A Oh, 6:00, 6:30 in the morning.
- Q You are definitely certain, are you, that on June 26, 1974, and on September 6, 1974, you did not participate in any hijacking?
  - A In no way.
  - Q With Mr. Lynch or anybody else?
  - A In no way.
- Q Do you remember whether or not at the time that you were convicted of this traffic situation, whether your picture was taken?
  - A Yes.
    - Q And your fingerprints?
    - A Yes.
      - MR. SIEGAL: No further questions.
- 20 CROSS-EXAMINATION
  - BY MR. PEDOWITZ:
    - Q Mr. McNally, I think you know who I am, Lawrence Pedowitz?
    - A Yes.
      - Q Mr. McNally, you live at 147-22 17th Avenue in

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- Whitestone, Queens?
  - A That's correct.
  - A The last four -- going on five years.

And how long have you lived there?

- Q What is your wife's name?
- A Margaret.
- Q Margaret Huval?
- A Right.

Q

- 10 Q And you are employed on Sin h Avenue; is that
- 11 right?
- 12 A That's correct.
- 13 O That's where the Diesel Construction Company
- 14 is located?
- 15 A Right.
  - Q And you are a close friend of Mr. Lynch's?
- 17 A Yes, sir.
  - Q And you talk to him on the phone?
- 19 A Many times.
- 20 | Q Many times?
- 22 Q Your wives speak to each other?
- 23 A That's correct.
- 24 Q And you speak to Mr. Lynch?
- 25 A On occasions the children talk to each other.

		262
1	8 mdmch	McNally-cross
2	Q	What do you talk about with Mr. Lynch on the
3	phone?	
4	A	A lot of sports.
5	· Q	Sports?
6	A	Yes.
7	Q	You meet him periodically, don't you?
8	Don't you	have an opportunity to speak to him about sports
9	when you	meet him?
10)	A	Yes, but the sports situation changes every day.
11	Q	The sports situation changes every day.
12		What sports in particular are you interested in?
13	A	Well, it depends on the season. When I went
14	to school	, that's all I did was play ball.
15	Q	Mr. Lynch, too?
16	A	No, Lynch used to come to the games to watch.
17	Q ·	He is one of your fans?
18	A	Right.
19		THE COURT: Mr. McNally, the jury can't hear
20	you.	
21		THE WITNESS: I'm sorry.
22		THE COURT: Take your time, sit back, open your
23	mouth and	speak up so that everybody can hear you.
24	Q	Another one of your friends is Roy Stanley Olsen?
25	A	Correct.

1	9 mdmch	McNally-cross	263
2	Q	Is he also a school buddy?	
3	A	When I first went to work in t	he elevator
4	business	I met Mr. Olsen.	
5	Q	You worked with him?	
6	A	I worked with him.	
7	Ω	Do you work with him now?	
8	λ	I work with him now.	
9	0	Mr. McNally, you had briefly b	een describing what
10,	your dut	ies are when you work for the Di	esel Construction
11	Company.		
12		Would you explain those to the	jury once again?
13	A	I am in charge of getting the	constructions
14	personne	l to the floors they have to do	their jobs on.
15	Q	What time do you normally work	?
16	A	I work from 5:00 in the morning	ng until 2:00
17	o'clock	in the morning. I work around t	the clock for
18	days.		
19	Ω	You always work from 5:00 in t	the morning until
20	did you	say 2:00 in the morning?	
21	. A	Not all the times. There are	times I worked
22	those ho	urs.	
23	Q	You worked odd hours; is that	correct?

And sometimes you can come in in the morning

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Yes.

1	10 mdmch	McNally-cross	264
2	and just	sign in and get paid; is that right?	
3	۸	Not really.	
4	Q	Not really?	
5	A	No.	
6	Q	Sometimes you work four hours a day and	d get
7	paid for	the whole day?	
8	A	Yes, but that's when I have men working	g for
9	me.		
10	Q	How about on June 26, 1974, how many h	ours
11	did you	work that day?	
12	A	5:30.	
13	Q	To 5:30?	
14	A	Yes.	
15	Q	Do you know that for a fact?	
16	A	Well, I figure it was about 5:30, 6:00	o'clock.
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2a

2 rdmch Q A Q A Q A Q A	McNally-cross 266  Where does she live?  She lives in Astoria, Queens.  Astoria, Queens?  Yes.  Do you know her address?  No.  Do you know her phone number?  No, I don't take her phone number.  What time did you get to the party?
A Q A Q A	She lives in Astoria, Queens.  Astoria, Queens?  Yes.  Do you know her address?  No.  Do you know her phone number?  No, I don't take her phone number.
Q A Q A Q A	Astoria, Queens?  Yes.  Do you know her address?  No.  Do you know her phone number?  No, I don't take her phone number.
A Q A Q A	Yes.  Do you know her address?  No.  Do you know her phone number?  No, I don't take her phone number.
Q A Q A	Do you know her address?  No.  Do you know her phone number?  No, I don't take her phone number.
A Q A	No.  Do you know her phone number?  No, I don't take her phone number.
Q	Do you know her phone number?  No, I don't take her phone number.
λ	No, I don't take her phone number.
Q	What time did you got to the party?
	what time did you get to the party:
λ	12:30, 12:00 o'clock; somewhere in there.
0	12:30, 12:00 o'clock at night?
Λ	Yes.
Q	You were only working until 5:30 that day?
А	I was in the Slate Restaurant. I was in the
restaura	nt before that. Becuase usually after work I stop
in anoth	er place, I have a drink and then I stopped over
the Slate	e because the Slate closes up around those hours.
That's w	hy I was leaving then.
Q	Who did you have dinner with at the Slate Rest-
aurant?	
A	I didn't have dinner with anybody that night.
Q	You ate on your own?
A	I didn't eat there that night.
Q	Mr. McNally, I thought you just told me you ate at
	the Slate That's w  Q aurant?  A Q A

1	3 rdmch	McNally-pross 267
2	the Slate	Restaurant.
3	A	I stopped at the Slate Restaurant.
4	Q	You didn't eat there?
5	A	No.
6	Q	What did you do at the Slate Restaurant?
7	A	I sit and drink.
8	Q	You sat and drank?
9	A	Yes.
10		The owner is a friend of mine.
11	Q	So the owner would have seen you there on
12	June 26,	1974?
13	Α	That's correct.
14	Q	What is the owner's name?
15	A	Seymour Rand.
16	Q	Seymour Rand, how do you spell that?
17	A	R-a-n-d.
18	Q	What is his address?
19	A	I believe he lives in Brooklyn. 'I don't know
20	his addre	988?
21	Q	Who else were you with in that bar that night?
22	A	I was alone.
23	0	You were alone?
24	A	Yes.
25	Q	But you saw Mr.Rand?

1	4 rdmch	McNally-cross 268
2	A	Right.
3	Q	And he saw you?
4	A	Yes.
5	Q	Is he going to be here to testify?
6		MR. SIEGAL: I object to that, if your Honor
7	please.	
8		THE COURT: Sustained.
9	Q	What time did you arrive at this bar?
10	A	Maybe 9:30.
11	Q	You stopped work at 5:30. What did you do
12	between 5	:30 and 9:30?
13	λ	Well, there's a bar across the street there where
14	I usually	stop in by my job.
15	Q	You like to drink?
16	A	On occasions.
17	Q	On occasions?
18	A	Yes.
19	0	You were drinking from 5:30 to 12:30 that
20	night on	your own?
21	λ	Yes.
22	Q	Nobody there?
23	λ	There's customers there.
24	Q	Do you know anybody that you might have seen on
25	June 26th	

1	5 rdmch	McNally-cross 269
2	. А	Well, I don't recall who was there that night.
3	Q	What was the name of the bar you went to
4	first?	
5	A	Villanova Restaurant.
6	Q	The Villanova Restaurant?
7	A	Yes, right near where I work.
8	Q	Where is that?
9	. A	47th Street and Avenue of the Americas.
10	Q	How long did you drink there?
11	A	A couple of hours.
12	Q	How many hours?
13	A	I don't keep track of time when I'm drinking.
14	Q	What time did you start?
15	A	I finished work 5:30, 6:00 o'clock. When I got
16	finished	work I walked over there.
17	Q	What time did you leave there?
18	A	Maybe three hours later.
19	. 0	Three hours later, and you didn't see anybody
20	you knew	there?
21	A	Who I knew there?
22	Q	Yes.
23	A	I know the bartender there. I know the people
24	who own t	he place. I eat lunch there.
25	Q	And his name?

1	6 rdmch	McNally-cross 270
2	6 Famen	The bartender's?
3	Q	Yes.
4	. А	Frank.
5	Q	Frank what?
6	A	I don't know his last name.
7	Q	Does he still work there?
8	A	Yes, he workds there.
9	Q	Do you know what his address is?
10	λ	I have no idea.
11	Q	Do you know what his phone numer is?
12	A	I have no idea. He's just a bartender.
13	Q	You finished drinking there about 9:30 and
14	then you	went to Slate's Restaurant?
15	A	Yes.
16	Q	Where you also drank?
17	Λ	Yes.
18	0	And you had nothing to eat that night?
19	A	I was going to a party. They had food at the
20	party.	
21	Q	What did you do at Slate's Restaurant? All
22	you did	was drink?
23	A	Sit, you know, talk.
. 24	Q	To whom?
25	A	I talked to the bartender, talked to the owner.

1	7 rmch	McNally-cross 271
2	. 0	Nobody else?
3	A	You meet people in bars; you talk to them.
4	Q	Anybody you remember?
5	A	Not really.
6	Q	What time did you get to this party?
7	A	About 12:30, I guess.
8	Q	About 12:30.
9		Approximately 12:30 or exactly 12:30?
10	A	About 12:30, because the Slate closes up around
11	12:00 o'c	lock.
12	Q	You waited until closing time; is that
13	right?	
14	Α	Yes.
15	Q	You got to this party at 12:30. What time did
16	the party	begin?
17	A ·	I never asked what time it began. Parties
18	start whe	n people come in to see the girl at the party.
19	She's wor	king.
20	Q	What is the name of the girl whose party you
21	went to?	
22	λ	Mrs. Sevior.
23	Q	What is her full name?
24	A	Grace Seviro.
25	Q	And do you know her address?

1	8 rdmch	McNally-cross 272
2	A	No, I don't know her address.
3	Q	λny idea?
4	٨	She lives in Astoria, as far as I know.
5	0	Just in Astoria, Queens?
6	A	Yes.
7	Q	You don't know how to spell the last name?
8	A	Not sure of it.
9	Ω	She works at your Diesel Construction Company;
10	is that r	ight?
11	A	She doesn't work in my Diesel Construction
12	Company.	
13	Q	I thought she was an employee of the company.
14	A	No one said that.
15	Q	Who is she?
16	A	I said she had worked for me years ago when I
17	had a cat	ering place.
18	Q	When you had a catering place?
19	A	Yes; 1962.
20	Q	You kept in close contact with her from 1962 to
21	1974?	
22	ν.	I'm friends with her husband.
23	Q	You are friends with her husband?
24	A	Yes.
25	Q	Do you know her husband's first name?

1	9 rdmch	McNally-cross 273
2	A	Frank.
3	Q	Frank Seviro?
4	A	Yes.
5	Q	Do you know how to spell the last name?
6	A	I'm not sure.
7	o	You arrived at 12:30 that night; is that right?
8	A	Correct.
9	Q	And what did you see when you got to the party?
10	A	A lot of people drinking, having a good time.
11	Q	Was Frank Seviro there?
12	A	Yes.
13	0	Was Grace there?
14	A	Yes.
15	Q	They both saw you?
16	A	Yes.
17	O	They are both going to be here to testify?
18		MR. SIEGAL: I object to that, if your Honor
19	please.	I didn't know we were under any obligation.
20		THE COURT: Sustained.
21	Q	You saw them; you saw both of them?
22	A	Yes.
23	0	You spoke to them?
24	Λ	Yes.
25	Q	Did you have a long conversation with them?

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A It's very hard to talk long conversations when a girl is working. She has a lot of other people there.

Q The girl was working?

A Yes.

Q Where was she working?

A She was working behind the bar.

Q Grace Seviro was working that night?

A That's the reason they had the party for her. She worked for the employer there.

Q While she was having a birthday party she was also working?

A That's right.

Q She is a bartender?

A That's correct.

Q Who else did you see that you recognized at this party?

A There's a lot of people. I couldn't remember all of them.

Q You must remember some of them. These were all friends.

Who else was there?

A I didn't say they were all friends of mine.

They were friends of hers. They come to see her, not me.

Q Who else was there that you recognized?

	1	
1	11 rdmch	McNally-cross 275
2	A	I don't remember offhand.
3	Q	You don't remember anybody else at that party?
4	A	Yeah, I remember another girl I knew there.
5	Q	Who?
6	A	A girl named Anna.
7	Q	Anna what?
8	A	Anna Tortera.
9	Q	Anna Tortora?
10	A	Yes.
11	Q	How do you spell the last name?
12	A	I'm not sure. T-o-r something. I'm not
13	very good	at spelling.
14	Q	Did you graduate from high school?
15	A	Yes.
16	Q	Where does she live?
17	A	Also in Astoria.
18	Q	Astoria, Queens?
19	A	Yes.
20	Ω	And she saw you there?
21	λ	Yes.
22	Q	Did you have a conversation with her?
23	λ	Yes.
24	Q	Who else did you see there?
25	A	I don't know. Offhand, I remember so many people.

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Q How did you remember this particular night,

June 26th running into June 27th?

A Anybody that ever worked for me when I was in business, when it was their birthday I always kept a record. I've gone to most of their parties, if I could make them.

Q That's very admirable.

MR.SIEGAL: I object. Move to strike it out.

THE COURT: Yes.

Disregard the comments from the opposite end of the witness box.

MR. PEDOWITZ: Sorry, your Honor.

THE WITNESS: I go to a lot of parties.

- Q This wasn't her birthday, was it?
- A That's when they were having the party.
- Q How do you know that that's when they had it?
- A Because I was told.
- Q You were told by whom?
- A I met somebody in the bar a week before. They told me there's a birthday.
- Q How do you remember that the birthday was on the 26th?
- A Because they said she's working that night, and try to stop in and see her. I said, "That's the night you

1	15 rdmch	McNally-cross	279
2	A	No, her birthday was at the end of	the week.
3	Q	It was on what day?	
4	· A	I believe it was a Saturday.	
5	Q	You believe it was a Saturday?	
6	λ	Yes.	
7	Q	Did you write that down?	
8	A	No, I didn't write that down becau	se, you see,
9	in the res	staurant business and the bar busin	ess you pay
10	tribute to	the people that work in it. The	nights you go
11	there are	the nights they are working so you	can leave
12	them a tip	p or bring a present.	
13		When I was in business, I must hav	e ran a hundred
14	parties fo	or people that worked for me. I on	ly run them
15	on the nie	ghts they work so they wind up maki	ng extra
16	money.		
17	· Q	How many parties would you say you	have gone
18	to altoge	ther?	
19	A	In my life?	
20	Q	Yes.	
21	Λ	I couldn't count them.	
22	Q	Give me the name of another person	whose party
23	you go to	regularly.	

What day was Anna's last party?

Go to Anna's party.

24

16 rdmch	McNally-cross 280
A	I don't remember the date.
Q	You don't remember the date.
1	How do you remember June 26, 1974?
A	Because I met somebody the week before who
mentioned	it to me. That's why I remember.
0	Who told you about Anna's party?
۸	When you stop in bars it gets around.
Q	Who told you about Anna's party?
A	I don't remember who tells me when I'm in bars.
Q	When did that person tell you about Anna's
party?	
A	I didn't go to Anna's birthday. I was at Grace's
birthday	
0	Maurice's?
6	MR. SIEGAL: He said "Grace."
Q	Grace's birthday party?
Λ	Yes. Right.
0	Do you know Gary Andrews?
A	No.
Q	You saw him testify in this courtroom; is that
right?	
A	Yes, I seen him testify.
0	Had you ever met him before?
Α	No, sir.
	A Q A mentioned Q A Q party? A birthday. Q Q right? A

î	17 rdmch	McNally-cross 281
2	٠٥	Do you know Albert Fillmore?
3	A	No, sir.
4	Q	Have you ever met him before?
5	A	No, sir.
6	ο	Do you know Luther Thomas?
7	λ	Who is Luther Thomas?
8	Q	He was one of the witnesses who testified in
9	court.	
10	A	I don't know him.
11	Q	You don't know Luther Thomas?
12	A	No.
13	Q	Never met him?
14		Do you know Ed Jermott?
15	A	Oh, that was the two fellows here?
16	Q	There were four peoplehere that were testifying
17	at your	trial.
18	А	If that's the name of the two fellows in this
19	box, I se	een them here.
20	Q	But you have never seen them before they came
21	into this	courtroom, had you?
22	A	No.
23	Q	You do like to drink, don't you?
24	λ	I'm Irish.
25	0	You are Irish.

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McNally-cross

Q So about 12:30 a.m., June 27, 1974, you wished Grace Savero happy birthday?

- A That's correct.
- Q And what time did you get home that night?
- A I got home that morning.
- Q What time?
- A Oh, 6:30, must have been, 6, 6:30.
- Q The party go on all night?

A Well, the party went on till like they were closing

It was after 4. By the time everybody got out of there, it

was after 5, 5:30, by the time we left the place.

- Q What did you do at the party?
- A What everybody else was doing, drinking.
- Q Did you call your wife that night to tell her that you would be late?
  - A No.
  - Q Do you normally come home at 6:30 in the morning?
- A She knows a lot of times I stop off with the fellows from work or something to drink.
- Q So there are many occasions when you come home at 6:30 in the morning and your wife doesn't worry?
  - A What?
  - Q Your wife doesn't worry about that?
    MR. SIEGAL: I object.

1	rdlt 2	McNally-cross
2		THE COURT: I think you are a little far afield.
3	Q	There are many occasions when you come home at
4	6:30 in the	e morning?
5	A	There's many occasions I come home at that hour
6	from work.	
7	Q	And you don't call your wife?
8	A	No, she knows I work some hours. Sometimes when
9	you're on	them elevators, you can't get off them.
10	Q	On June 26, 1974, what hours did you work?
11	A	Repeat that , please?
12	Q	On June 26, 1974, what hours did you work?
13	Α	ABout 5:30, 6 o'clock.
14	Q	What time did you start?
15	A	7, 7:30 in the morning.
16	Q	And when you got done at 5:30, you didn't call
17	your wife?	
18	A	No.
19	Q	She may have thought you were working all night,
20	is that rig	ht?
21		MR. SIEGAL: I object to that, your Honor. It is
22	hypothetica	1.
23		THE COURT: Sustained.
24	Q	When was the last time you saw Grace Savero?
25	A	The last time?

		285
1	rdlt 3	McNally-cross
2	Q	Yes.
3	A	Oh , it's quite a while now. I might have met
4	her with he	r husband one night when I was stopping around.
5	It's been a	while.
6	Q	How long?
7	A	It's got to be months.
8	Q	Months?
9	A	Sure.
10	Q	When was the last time you saw Frank Savero; was
11	that the sa	me time, months ago?
12	A	No, I believe I met him once after that. He was
13	having a dr	ink with somebody and I was having a drink with
14	somebody el	se and I sent him over a drink and he sent me one.
15	That's abou	it it.
16	Q	They live in Astoria, Queens?
17	λ	That's correct.
18	Q	What's your best guess at how they spell their last
19	name?	
20		MR. SIEGAL: I object to guessing.
21		I will withdraw the objection.
22		THE COURT: How do you spell it?
23		THE WITNESS: S-e-r-v-e-o, something like that.
24	I'm not too	good a speller.
25	Q	Savero? Is it S-a-v-e-r-o?

		286
1	rdlt 4	McNally-cross
2	A	It could be S-a-v. The worst subject in school
§ 3	was spelling	g. Don't know how I graduated.
4	Q	I don't spell very well, either.
5		You know Jack Lynch from high school; is that
6	correct?	
7	A	Yes.
8	Q	Occasionally you go downtown and you buy some
9	meat; is th	at right?
10	. А	That's correct.
11	Q	Where do you go?
12	A	The Old Bohemian.
13	Q	Where is that
14	A	13th Street between Washington and I believe the
15	other stree	t is 10th Avenue, West End Avenue, whatever you
16	call it.	
17	Q	You spend a lot of time down that area?
18	A	Not a lot of time. When I go for meat. No reason
19	to be there	any other time.
20	Q	How often do you go down there?
21	A	Depends when I need meat. I go down there for
22	five years.	
23	Q	You don't hijack trucks when you need meat, do you?
24	A	No. I have no reason to. I can afford it.
25		MR. SIEGAL: May we have the last answer?

í	rdlt 5 McNally-cross
2	THE COURT: He said "No, I don't need to," I think
3	was his answer.
4	MR. SIEGAL: Thank you.
5	THE COURT: Is that the way you heard it?
6	Q While you were down that area, you never saw Luther
7	Thomas, you never saw Gary Andrews before and you never seen
8	Albert Fillmore or Edward Jermott before?
9	A No, sir.
10	Q Was Grace Savero's birthday the Saturday before
11	June 26th or the Saturday after?
12	A The Saturday after.
13	Q Mr. McNally, you heard the testimony about September
14	26th, 1974, the hijacking that took place on that day; correct?
15	A You'd have to refresh me on that.
16	Q Well, you heard Luther Thomas and Edward Jermott
17	testify that they were hijacked about 2:15 on 9th Avenue and
18	34th Street; correct?
19	A Right.
20	Q They testified that Mr. Lynch was the person who
21	approached their turck on 9th Avenue and 34th Street; correct?
22	A That's what I heard.
23	Q That was 2:15 in the afternoon; right?
24	A I don't know. That's what I heard, the testimony.
25	Q That's what you heard?

- 11		200
1	rdlt 6	McNally-cross
2	A	That's what I heard.
3	Q	Were you with Mr. Lynch at 2:15 on September 6,
4	1974?	
5	A	I was at work.
6	Q	You were at work?
7	A	Yes.
8	Q	What time did you work till that night?
9	A	I left work at 5:30 because I had to get my car.
10	I wouldn't	have been able to have it for the weekend. It was
11	at a dealer	on 11th Avenue. I had to get it out before 6
12	o'clock.	
13	Q	You heard the testimony of Mr. Jermott and Mr.
14	Thomas that	you didn't appear until 9:30 that evening on the
15	New Jersey	Turnpike; is that right?
16	A	Something like that. I wasn't paying much atten-
17	tion.	
18	Q	And you weren't working at that time, were you?
19	A	No, I wasn't working at that time.
20	Q	And you don't know what Mr. Lynch was doing that
21	day?	
22	A	I have no idea.
23	Q	You were in Korea?
24	A	Yes.
25	Q	What was your rank?

		289
1	rdlt 7	McNally-cross
2	A	Corporal.
3	Q	What sort of firearms did you carry?
4	A	I was a machine gunner.
5	Q	You were a machine gunner?
6	A second	Was Mr. Lynch in the Army?
7	A	Lynch was in the Marines.
8	Q	He was in the Marines. Does he know how to use
9	firearms?	
10	A	I guess everybody does if they train you in the
11	service.	That's what they train you for.
12	Q	Do you own a firearm?
13	A	No.
14	Q	Does he own a firearm?
15	A	No.
16	Q	Have you ever seen him with firearms?
17	A	No, I haven't.
18	Q	But you know how to use one, don't you?
19	A	I know how to use a rifle and a machine gun.
20	Q	It is not very difficult to use a pistol, is it?
21	A	I have had training with a 45 when I was in the
22	service.	
23	Q	Who does Mr. Lynch work for?
24	A	He works for CBS.
25	Q	Chelsea Warehouse, is that right?

		290
1	rdlt 8	McNally-cross
2	A	Chelsea Trucking.
3	Q	He's a trucker's helper, isn't he?
4	A	Driver and helper.
5	Q	He knows trucks, doesn't he?
6	A	That is his living.
7	Q	Do you know the Bruckner Boulevard area of
8	Manhattan -	of the Bronx?
9	A	Not really.
10	Q	You live up in that area, don't you?
11	A	I live in Whitestone.
12	Q	How far is that from Bruckner Boulevard?
13	A	I have no idea.
14	Ω	You have never been on Bruckner Boulevard?
15	A	I don't say I've never been on there. I have been
16	there but I	don't remember when.
17	Q	You don't know that area?
18	A	Not really.
19	0	Isn't it right across the bridge?
20	A	I work in New York, I don't work
21	Q	You don't go over the Whitestone Bridge?
22	A	Yes, I do.
23	Q	How do you get to New City, New York?
24	A	How do I get to New City, New York?
25	Q	Yes.

1	rdlt 9 McNally-cross
2	A Two ways I can go. I take the Cross Bronx
3	Expressway and go over the George Washington Bridge
4	Q Isn't Bruckner Boulevard right by the Cross
5	Bronx Expressway?
6	A I believe there is an exit there or something. I
7	also go to New City
8	Q Do you know Mr. Olsen?
9	A I certainly do.
10	Q He lives in New Jersey, doesn't he?
11	A New Jersey, correct.
12	Q Mr. McNally, during the last month, did you try
13	to make sure the day of the party was June 26, 1974?
14	A Did I try to make sure?
15	Q Yes,
16	A I never made sure of the date until I decided,
17	you know, when I come up with this question and I spoke to my
18	lawyer and I said that that's where I was.
19	Q How could you be sure? You are not sure about the
20	date, are you, Mr. McNally?
21	A I'm sure about the birthday party.
22	Q You are sure there was a birthday party but you are
23	not sure it was June 26th, are you?
24	A As far as the date?
25	Q Yes.

1	rdlt 10 McNally-cross
2	A I don't remember the date but I know it was a
3	birthday party I was at when they had it. June 26th happened
4	to be the same day as the birthday party.
5	Q How do you know that?
6	A Well, after talking to my lawyer, he wanted to know
7	where I was.
8	Q Did your lawyer tell you it was June 26, 1974?
9	A No. My lawyer told me to tell the truth.
10	Q He didn't tell you it was June 26, 1974, did he?
11	He wasn't at the party, was he?
12	A No, he was not at the party.
13	Q And you are not sure of the date, are you?
14	A He asked me what I was doing on the charge I'm,
15	charged on and I retraced what I was doing for the day.
16	Q How did you retrace the date? How did you figure
17	out it was June 26, 1974?
18	A We just happened to be talking about what I was
19	doing. I was trying to recollect what I was doing and I was
20	at a party that week. The date happened to be on the same
21	date as the party.
22	Q Mr. McNally, the party was on June 26th? How do yo
23	know that? What did you do in your mind to figure out that it
24	was June 26th? Did you call Grace Savero?
25	A No, I didn't.

- 11	293
1	rdlt 11 McNally-cross
2	Q Did you call Frank Savero?
3	A No, I did not.
4	Q How did you figure out it was June 26th?
5	A Because I retraced the steps of the week and it
6	happened to be the same day I was at that party.
7	Q What were you doing on June 22, 1974?
8	A Went to work.
9	Q June 23rd?
10	A June 22nd, I don't think I worked on June 22nd.
11	Q You don't think you worked on June 22nd; how do
12	you know that?
13	A I believe I was off on June 22nd.
14	Q You believe you were off on June 22nd. What did
15	you do on June 22nd?
16	A Excuse me, could I ask a question?
17	Q No. What were you doing on June 22nd?
18	A Probably with my family.
19	Q You were with your family. What day was June 22nd?
20	A If I was with my family, it was the weekend.
21	Q If you were with your family, it was the weekend?
22	A Or else I'm at work.
23	Q On June 26th you were at a party but you don't know
24	how you can figure out that the party was on that date?
25	A Well, when I got charged with this crime that I

	274
1	rdlt 12 McNally-cross
2	didn't commit I wanted to know where I was and talking it ove
3	with my lawyer, I happened to remember being at that party the
4	night.
5	Q On June 26, 1974.
6	A That's the night the party was, that's the date.
7	Q But how do you know that?
8	A I was at the party.
9	Q Now, who did you see all together on June 26,
10	1974, on that evening?
11	A Repeat that, please.
12	Q Who did you see on the evening of June 26, 1974
13	and running into the night of June 27, 1974?
14	A You mean going through the whole day at work
15	and everything?
16	Q You weren't working in the evening, were you?
17	A You're talking about the evening or the day?
18	Q Just the evening.
19	A I got finished work and I went to the restaurant
20	that I usually spend time in.
21	Q Who did you see?
22	A The bartender.
23	Q Did you contact the bartender and tell him that
24	you needed him to testify here?
25	MR. SIEGAL: I object to that.

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McNally-cross/redirec	t

rdlt 13

THE COURT: Sustained.

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Q Did you tell the bartender "Do you remember what happened that day?"

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MR. SIEGAL: I object to that.

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THE COURT: Sustained.

7

Q Who else did you contact?

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MR. SIEGAL: I object to that. Vague, indefinite.

9

Q Did you contact anyone?

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MR. SIEGAL: I object.

11

MR. PEDOWITZ: I will rephrase it.

12

Q Did you contact anyone that you saw on the night

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of June 26th and the morning of June 27th to ask them what

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happened that night?

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I really had no reason to.

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MR. PEDOWITZ: No further questions.

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REDIRECT EXAMINATION

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BY MR. SIEGAL:

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Q Mr. McNally, when you were arrested in connection with this case, there was a charge, was there not, that you had committed a hijack on June 26th; is that correct?

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A That's correct.

23

Q And did I then ask you to tell me what you had done all that day?

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MR. GROSS: Objection.

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SOUTHERN DIS HICT COURT REPORTERS, U.S. COURTHOUSE FOLEY QUARE, NEW YORK, N.Y. CO 7-4580

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1	rdlt 14 McNally-redirect
2	THE COURT: Overruled.
3	Q Mr. McNally, what is your answer?
4	A Yes, you asked me what I did for the day.
5	THE COURT: When were you arrested?
6	THE WITNESS: When was I arrested?
7	THE COURT: Yes.
8	THE WITNESS: September 18th, I believe it was.
9	Is that correct?
10	MR. SIEGAL: September, '74, yes, Judge.
11	Q Did I ask you to retrace your steps and let me know
12	where you were all day and all night? Did I ask you to do
13	that for me?
14	A That's correct.
15	Q And did you thereafter come back to see me and we
16	discussed this case further?
17	A That's right.
18	Q Did I ever suggest to you where you were on June
19	26th?
20	A No.
21	MR. PEDOWITZ: I object because it seems to me
22	to be opening up the attorney-client privilege.
23	THE COURT: Overruled.
24	Q What was your answer? I didn't hear it.
25	A No.

		rdlt	14A
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## McNally-redirect

Q Now, the question was put to you a little while ago, what were you doing on the 22nd of June. Now, did you know what day the 26th of June was?

A I believe the 26th of June was a Wednesday.

1	mdlt 1 McNally-redirect 297
2	Q Would the 22nd therefore be on a Saturday?
3	A It would be a Saturday or a Sunday.
4	Q To go back, Tuesday would be the 25th, Monday,
5	the 24th, Sunday the 23rd, and Saturday the 22nd; is that
6	correct?
7	A Yes.
8	MR. SIEGAL: No further questions.
9	MR. PEDOWITZ: No further questions, your Honor.
10	THE COURT: You are excused, Mr. McNally.
11	THE WITTESS: Thank you, your Honor.
12	(Witness excused.)
13	THE COURT: We will take a short recess.
14	(Recess taken.)
15	(In open court - jury present.)
16	MR. SIEGAL: Mr. Garber
17	ALLEN GARBER, called as a witness
18	on behalf of the defendants, being first duly sworn,
19	testified as follows:
20	DIRECT EXAMINATION
21	BY MR. SIEGAL:
22	Q what is your official position
23	A Special agenc, redetal bases
24	Q Are you one of the agents concerned with the
25	investigation of this Liedtka case?

e 3A p.m.

/75	1	1 mdmch	C	Collins-direct	301
3b	2	GERAL	р м.	COL LINS,	called
	3	as a	witness by th	ne defendants, being f	irst duly
	4	sworn	, testified a	as follows:	
	5	DIRECT EXA	MINATION		
	6	BY MR. SIE	GAL:		
	7	Q	Mr. Collins,	what is your official	position?
	8	Α	Special agen	t with the Federal Bur	eau of
	9	Investigat	ion, sir.		
	10	Q	On November	12, 1974, did you atte	end a lineup
	11	in connect	ion with a ma	an named Lynch?	
	12	. A	Yes, sir.		
	13	Q	Was Mr. Lync	h placed in a lineup w	with other
	14	people?			
	15	λ	Yes, sir.		
	16	Ω	l was presen	t at the time with you	a, do you
	17	recall?			
	18	A	Yes, sir.		
	19	Q	Was there a	man named Edward Jermo	ott brought
	20	into the w	itness room	that is behind the wir	ndow and
	21	asked to 1	ook at the p	eople at the lineup?	
	22	۸	Yes, sir.		
	23	O	And did Mr.	Jermott state that he	did not

That's my recollection, sir.

recognize anyone in the lineup?

24

1	2 mdmch	Collins-direct	302
2	0	Was there another lineup on the same	date, sir,
3	wherein K	enneth S. McNally was put into a lineu	p with
4	other peo	ple?	
5	A	Yes, sir.	
6		I would like to see my report, if I o	could, sir.
7	Q	Yes. I show you 3526 and 3527.	
8		(Pause)	
9	Α	Yes, sir.	
10	Ω	Does that refresh your recollection?	
11	λ	Yes.	
12	Q	Was there another lineup on the same	date in which
13	Mr. Kenne	th S. McNally was placed in a lineup w	vith
14	other peo	ple?	
15	A	Yes, sir.	
16	Ω	And was Mr. Edward Jermott asked to	view Mr.
17	Kenneth S	. McNally at that leneup?	
18	A	Yes, that's my recollection.	
19	Ω	And did Mr. Edward Jermott state that	t he was
20	unable to	recognize anyone in the lineup?	
21	Q	Did Mr. Jermott state that he was una	able to
22	recognize	anyone in the lineup which included	Kenneth S.
23	McNally?		
24	λ	That is my recollection, sir.	

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CROSS-EXAMINATION

BY MR. GROSS:

- Q On November 12, 1974, were you present also at a lineup at which Mr. Lynch was there?
  - A Yes, sir, I was.
- Q And was Mr.Siegal present at the same sime at the linup?
  - A Yes, sir.
- And were discussions held between you and Mr. Siegal with regard to how the lineup would be conducted?
  - A Yes, sir.
- Q Did Mr. Luther Thomas have an opportunity to view the lineup in which Mr. Lynch was present?
  - A Yes, sir.
  - Q And was he asked if he recognized Mr. Lynch?
  - A Yes, sir.
  - O And what was his response, sir?
  - A He stated he recognized a person in the lineup.
  - Q Did he tell you who it was?
- A He did not tell me personally. He made a statement in my presence he did positively recognize someone in the lineup, and that's the only statement made in my presence and Mr. Siegal's presence.

1	4 mdmch	Collins-cross 304
2	0	That was Mr. Lynch?
3		
	۸	Yes, sir.
4		THE COURT: Which photograph is this lineup,
5	which exh	
6		MR. GROSS: It's Government's Exhibit 5.
7		THE COURT: Which lineup?
8		MR. GROSS: Of the November 12, 1974 lineup in
9	which Mr.	Lynch appeared.
10		THE COURT: All right.
11	0	Is that a photograph of that lineup?
12	۸	Yes, sir.
13	Q	In which Mr. Luther Thomas identified Mr. Lynch?
14	A	Yes, sir.
15	Q	Were you also present when a Mr. Andrews
16	attended	the linup on November 12, 1974?
17	Λ	Yes, sir.
18	٥	And was Mr. Siegal also present?
19	۸	Yes, sir.
20	n	Did you discuss how that lineup would be held
21	with Mr.	Siegal?
22	۸	That's correct, sir.
23	Q	Did he voice any objections at all?
24	λ	No, sir.
25	Q	Did Mr. Andrews observe the lineup in which

1	5 mdmch Collins-cross 305
2	Mr. Lynch was present?
3	A He did.
1	O Was he asked if he recognized anyone?
5	Λ That's right, he did.
6	Q And did he say that he recognized anyone?
7	A He stated he did recognize someone.
8	Q Who was that?
9	A Mr. Lunch.
10	Q I show you what has already been admitted into
11	evidence as Government's Exhibit 1.
12	Do you recognize it?
13	Λ Yes, sir.
14	Q Is that a photograph of the lineup in which
15	Mr. Lynch appeared where Mr. Andrews said that he identified
16	Mr. Lynch?
17	A Yes, sir.
18	MR. GROSS: Thank you, your Honor. No further
19	questions.
20	THE COURT: Any redirect?
21	MR. SIEGAL: No redirect, Judge.
22	THE COURT: You are excused.
23	(Witness excused)
24	MR. SIEGAL: That is as far as I can go today.
25	I have three subpoenas out. I was caught short today

UNITED STATES OF AMERICA

v.

75 Cr. 314

April 3, 1975

KENNETH MCNALLY and JOHN LYNCH

mdmch 1

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10:45 a.m.

(Trial resumed)

(In the robing room)

MR. SIEGAL: I intended to save you a lot of time today. I was going to cancel out on a number of witnesses. I was only waiting for one.

He was subpoenaed down here at police headquarters, and I hope to get him here any minute.

THE COURT: What is your application?

MR. SIEGAL: For a couple of minutes, because he is an important witness to me.

THE COURT: Sure.

MR. GROSS: I don't think there will be any difficulty with this at all because I know Mr. Siegal has been trying cases longer than I ever will. I just want to make sure the record is clear on one point, and that is that Mr. Siegal, throughout his discussions with his clients, discussions about which I don't want to know. sees that there is no conflict between them.

MR. SIEGAL: I don't see any conflict, especially

in view of the testimony yesterday by McNally. He testified for him. I don't see any conflict here.

MR. GROSS: I agree.

MR. SIEGAL: I am not going to pull anything in the summation, that's for sure, about him creating any conflict. I don't see it.

THE COURT: I don't see any conflict.

what you want me to charge other than taking the stand and failure to take the stand. Do you want both? One defendant took it; the other one did not.

Normally, you don't say anything if he doesn't take the stand.

MR. SIEGAL: I don't know about the reaction of a jury. You ought to tell them the defendant has the right not to take the stand, if he so chooses.

THE COURT: I will give it both ways.

MR. GROSS: Just so you and I don't have to face a 2255 down the road sometime, if, without any embarrassment, Mr. Lynch and Mr. McNally at this point could list briefly say on the record at this point they are satisfied with Mr. Siegal having represented them both, I would appreciate it.

THE COURT: I would appreciate that, too.

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MR. SIEGAL: I will talk to them.

THE COURT: I will be the guy who suffers with the 2255 with some Assistant who just got the job and doesn't know beans about what the problems are while you are off making a fortune somewhere.

Call in the defendants.

(The defendants enter the robing room.)

MR. SIEGAL: Mr. McNally and Mr. Lynch,

I believe that we have from time to time discussed the
matter of both of you being represented by me alone, and
we discussed the question of whether or not there might
be any conflict of interest between us. I think we discussed it fully, and I think that we came to a determination
that there was no conflict of interest between the two of
you; is that correct?

DEFENDANT LYNCH: We discussed it in the office, that's right.

MR. SIEGAL: Do you consent to my representing both of you? Obviously we are at the end of the game, but we want to put it on the record.

DEFENDANT LYNCH: You pointed it out to us when we first came to you.

DEFENDANT MCNALLY: Yes.

THE COURT: And you consent to Mr. Siegal

1	mdmch 4
2	representing both of you?
3	DEFENDANT MCNALLY: Yes.
4	DEFENDANT LYNCII: Yes.
5	He pointed that out to us when we first came
6	to his office.
7	THE COURT: Thank you.
8	(In open court; jury present)
9	THE COURT: Good morning. I want to apologize
10	for keeping you waiting. It's no one's fault. The
11	witness we expected was late in arriving. None of us
12	could help it.
13	MR. SIEGAL: In view of the fact he hasn't
14	honored the subpoena, I will rest.
15	THE COURT: You rest?
16	MR. SIEGAL: I will have to rest.
17	Could I put on the record
18	THE COURT: We can do it afterward.
19	MR: GROSS: We have a very brief witness,
20	your Honor. Mr. Collins.
21	GERALD M. COLLINS, resumed.
22	DIRECT EXAMINATION
23	BY MR. GROSS:
24	Q Mr. Collins, directing your attention to

August 5, 1974, were you at FBI headquarters?

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A Yes, sir.

Q Did there come a time when Gary Andrews came to FBI headquarters?

A Yes, sir.

Q Did there come a time when he looked through the albums that your squad keeps at FBI headquarters?

A That's correct, yes, sir.

What happened when he looked through the albums?
MR. SIEGAL: I object to it.

THE COURT: Overruled.

A He selected a photograph from the albums.

Q I show you what has been marked as Government's Exhibit 3. Can you tell us what photograph he, Mr. Andrews, picked out that day?

A Yes, sir. He selected this photograph here, sir.

Q What number is under it?

A No. 4, sir.

Q And what, if anything, did he tell you when he selected Photograph No. 4?

A He said that this was the individual who drove the Cadillac in the hijacking of his truck which occurred on June 26th.

MR. GROSS: Your Honor, it's already been in

All we had in this case was a play on words. Nothing else.

This is the case. That's all this is about.

There is no question somebody may have hijacked some trucks. Somebody may have stolen some foods, or meats, whateverthey call it. That's not what this case is about. This case is simply and squarely on the issue of identification.

Have they convinced this jury beyond a reasonable doubt that the identification given to you by the witnesses from that stand are such that you can take and say to yourself, "Oh, these people told us the truth because they wouldn't lie"?

Then we have the testimony of Mr. McNally. His
Honor will tell you in his charge the defendant has no
burden of proving anything, he doesn't have to do a thing;
he can sit there and not raise a finger and say to the
United States Attorney, "You have gotten an indictment;
go ahead and prove it."

He didn't have to subject himself to cross examination. He took the stand.

Who is he? Who is he, a man that doesn't work, a man who hasn't got a gainful occupation, a man that has

...

a necessity to hijack?

years, I think his testimony was, as a construction elevator operator of some sort. You heard his testimony. He named all the various companies that he worked for, and you can believe him that if he didn't work for those companies you would have heard from witnesses here that he didn't work for those companies. And if he didn't work for this last outfit that he's werking for now for the last four or five years, ad was not earning -- I think he said 25 to 30 thousand dollars, or five to six hundred dollars a week -- you would have heard about that, too.

You heard his testimony. What is there about his testimony that is unworthy of belief? That's a hard-working man that works hours and hours a day, sometimes overtime.

He has been a member of this union 22 or 23 yeards. Does that sound like a hijacker to you?

He tells you that he knows -- no hiding here, not the slightest -- deosn\*t he tell you he knows Jackie Lynch, he has been a friend of his since high school, that the families are friends of each other, that their calls go back and forth between the families and the kids, that Jackie Lynch on many an occasion came with his truck from where he is employed, that CBS truck of some sort, to pick him up to

park and use the truck to take advantage of that situation, and on other occasions Jackie Lynch picks him up and they go down to the meat area, 14th Street, West Street, 13th Street, and they buy meat wholesale at the Old Bohemia?

He didn't hide the place. He didn't say "I buy meat any old place that I walk into." Oh, no, he said, "Go ahead, check me out. I buy my meats from Old Bohemia. We go there once or twice a month. When we get down there we go in and have a drink."

He wasn't ashamed to tell you he taks a drink once in a while. Goes down and has a sandwich. He knows the bars, the Anvil Bar, and he named the others too numerous for me to mention. And the U. S. Attorney seemed to question "You seem to like a drink." And what was his honest answer? Could it be any more honest? "Well, I'm Irish."

How can you tell when a man is telling the truth except by honest answers? He didn't hide anything. He exposed himself, permitted himself to be cross examined, and what do we find? We find that his testimony stands in this courtroom uncontradicted, unchallenged. And is that the kind of testimony you are going to pass by and say that that doesn't help you make up your mind that you have a

reasonable doubt in this case?

Can you do that honestly and conscientiously?

Can you say that the government has proven a case here beyond a reasonable doubt, or, as the Court will say to you, that if you have a reasonable doubt as he defines it it is your sworn duty to acquit?

After analyzing all of this testimony, after listening to the charge of the Court as to the definition of reasonable doubt, after listening to the instruction of the Court that if you have such a reasonable doubt you must acquit, I am sure that you will not disobey this Court when he gives you his instructions.

Now, let's see if I can just take up another moment with you to see if I can help orient you as to where to look in this record to see whether or not there is a reasonable doubt in this case.

Well, let's see. Does the fact that there was no identification on June 27th, the day after?

Does the fact that there was no identification on August fifth, together, raise a reasonable doubt in your mind?

Does the fact that these people supposedly went around town for hours and hours with plenty of time for observation, went into the bar and sat down with them right across the table, raise a reasonable doubt in your mind?

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 Does the failure to call the police in less than an hour or two hours, as the testimony is here, raise a reasonable doubt in your mind?

Does the fact that they talked about money at the table?

Does the fact that they said that they would call them to let them know where the truck was raise a reasonable doubt in your mind?

Do all of these things I have just pointed out to you raise a reasonable doubt?

Does the fact that Fillmore identified Government's Exhibit 11, this picture here, in and of itself raise a reasonable doubt?

Does the fact that these two pictures taken togehter face to face without any possibility of similarity raise a reasonable doubt in this case?

Does the fact that Fillmore changed his testimony and then subsequently put in the name of Lynch instead of Santora raise a reasonable doubt?

Does the fact that the bartender who could have observed, if he was there, if they pointed out the bar and the bartender -- the failure to bring him in, raise a reasonable doubt in your mind as to why, why wasn't he brought into this case?

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Now, let me briefly talk about the identification of Mr. McNally, andlet me pause to suggest to you that the fact that Mr. McNally and Mr. Lynch are very, very close friends corroborates that the government's four witnesses were not mistaken when they picked out Lynch at a separate lineup and when they picked out McNally at a separate lineup. I mean it's absolutely inconceivable that four people, all viewing people separately, would just by coincidence, by luck, identify two people whom it turns out are close friends.

The reason for that is that they are close friends; they are close friends in the hijacking business. They left their stamp on the hijacking on June 26th, 1974, by doing it the same way that they did it on September 6th, 1974. The same two men. The same way that the hijacking occurred by two close friends, John Lynch and Kenneth McNally.

You will remember that Mr. Andrews on August 4, 1974, looked through approximately five hundred pictures of people, five hundred separate pictures, and in that FBI album was a photograph of Kenneth McNally. And after he looked through 500 pictures he picked out the photograph of Kenneth McNally and said, "That's the man who was driving the car on June 26, 1974."

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this photograph, another fair lineup, and he said that Kenneth McNally was the driver. The FBI agent was there, and he testified to that on the stand. Mr. Fillmore testified to that on the stand. It was a fair lineup. Mr. Siegel was present, and here is a picture of it.

Now, Mr. Thomas, the man who is supposed to be framing Mr. McNally, only says that Mr. McNally looks like the hijacker. He doesn't come in and say that McNally was the man; he just says that he looks like him.

Mr. Jermott, the man who is supposed to be framing Lynch and McNally, does not recognize Mr. McNally. There is no question about that at all. But Kenneth McNally and John Lynch left their stamp. They conducted the September 6, 1974 hijacking in precisely the same manner that they conducted the June 26, 1974 hijacking. Good friends; lousy hijackers.

Mr. McNally took the stand and said he was at a party on June 26, 1974. Of course there are no witnesses here who were at that party to support Mr. McNallys testimony that he was at a party, and he was at a party with his friends. I suggest to you that if he was really there, or if the party really happened, he would have had his friends here to testify that on June 26, 1974, he could not have been at a hijacking, he was at a party. They are

not here, and that is because Mr. McNally was hijacking.

Now, how does he know where he was on June 26, 1974? He recollects by going backwards. He recollects it. Did he contact any of his friends to see where he was on June 26, 1974? No. Did he bring my of them in the courtroom? And these people are his friends. He was supposedly at a birthday party with them. Did he bring any of them here to say that McNally was at a birthday party?

No. And the reason was that it was a party, but it was a hijacking party on June 26, 1974.

Now, ladies and gentlemen, four witnesses came into this courtroom and testified under oath and they testified, all four of them, that John Lynch was the hijacker on both instances and two of them testified that Kenneth McNally was the hijacker on the June 27th incident. They testified in a manner that was completely believable, having already identified them in lineups, and I submit to you, ladies and gentlemen, that is proof beyond a reasonable doubt.

Thank you.

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## CHARGE OF THE COURT

THE COURT: Before instructing you on the law that applies to his case, I want to thank you for your prompt attendance and very careful attention which you have given to the evidence in this case and to the closing arguments of counsel.

I will say that both of us have been privileged to hear extraordinarily capable closing arguments. And that is the adversary system of our law. When it works right, as it has here, you and I are given both sides of the case, the issues are focused and your decision is made that much easier and probably that much more accurate, when you reach it.

Now, the Court and the jury have different functions. It is my function and duty to preside at the trial, to instruct you on the law that applies to this case and it is your duty to accept the law as I give it to you, whether or not you agree with it, and to apply that law to the facts as you find them.

In short, I am the exclusive judge of the law. On the other hand, you and you alone, are the exclusive judges of the facts. You and you alone decide what weight, what effect, and what value you will give to the evidence.

You decide whether or not to believe a witness and, of course,

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ultimately you decide the innocence or guilt of each defendant in this case on each of the four counts charged. in this indictment.

Now, you are not to conclude from any rulings that I made throughout the trial or any questions that I have asked that I have any opinion one way or another as to the guilt or innocence of either of these defendants. That decision is exclusively yours.

Now, finding the facts is merely a process by which you, the jury, consider all of the exhibits which have been received in evidence, weigh the testimony of all of the witnesses, sift out what you believe, put it in the scale of your reasoning powers, and draw such conclusions as your experience in life and your common sense tell you that the evidence supports and justifies, and decide just where the truth lies in this case.

Now, in this context all evidence is of two general types:

Direct evidence and circumstantial evidence.

Evidence is direct when the facts are shown by exhibits which are admitted into evidence or when the facts are shown by the sworn testimony of a witness who has actual knowledge of the facts from something that he has learned through the exercise of one of his five fundamental

senses.

For example, something that he saw, something that he heard, something that he touched.

Now, circumstantial evidence simply means drawing a logical inference or conclusion from other connected facts that have been snown by direct evidence. The classic example of circumstantial evidence is Robinson Crusoe's conclusion that there was another man on his island from his observation of the footprint. He did not see any other man on the island, he did not hear any other man on the island, but he knew that the foot print was not his own, and from the simple observation of another human footpring, he drew the logical, and indeed, the only conclusion, that there was another human being on the island.

Now, not all circumstantial evidence is quite as clear as that, the example I have just given to you, but I am sure that you are all familiar with the process. You use it in your everyday lives. You draw logical conclusions from other connected facts and the process is no different here.

Now, no greater degree of certainty is required when evidence is circumstantial than when it is direct.

For in either case you must be convinced beyond a reasonable doubt before you can find either of these defendants

guilty.

In this connection it is your memory of the evidence that controls here. It is not the way I remember it and it is not necessarily the way counsel remember it.

If your memory of the evidence squares with what the lawyers just told you their memory of it was in their closing arguments, you can accept what they say. But if you have a different recollection of it, you are bound by your oath to reject their version of the evidence and to rely on your own memory.

And what I have said about the lawyers also applies to me. Now, I do not intend in this case to make any elaborate summation of the evidence. It has been a short trial and both sides have been represented by lawyers of extraordinary competence, and it would be presumptuous of me to attempt to summarize this evidence. I will rely on your memory.

Now, here and there I will touch on some of it simply to focus your attention on the issues of fact which you must decide.

Probably your most important function is to determine who is telling the truth. It is your exclusive function to decide which witnesses you will be lieve, and this is so as to every witness, whether the witness was

called by the government or by the defense, whether the witness is a member of the FBI or a defendant on trial in this case. It is your function and your exclusive function, to decide whether that witness is telling the truth, and you will judge his testimony by the same standards that apply to all the other witnesses.

You are not to be influenced here by the number of ber of witnesses called by either side or by the number of documents received in evidence. You are concerned not with the quantity of the evidence, but with its quality. The first testimony which you should apply in determing the trustworthiness of a witness is to measure what he says against your plain, every day experiences and common sense. You are not bound to believe unreasonable statements or to accept testimony that defies your common sense, or, worse, insults your intelligence, just because the statements are made under oath in a public courtroom.

You saw the witnesses in this case. In deciding whether to believe a witness you should consider not only what he said, but how he impressed you on the stand; his manner and his conduct on the witness stand. I noticed that you observed every one of these witnesses with particular care as they were testifying. How did the witness strike you? How did he impress you? Was the witness

being frank with you? Was ne being evasive? Did his version of the facts here appear to be straightforward? Was he trying to conceal any facts? Was he just parroting answers? Did ne nave any motive to testify falsely? Is he interested in any way in the outcome of this case? How strong or weak was his memory of important events?

In short, can you rely on him? Can you trust him? Did he snow any bias or prejudice here? Was he hostile or friendly to either side of this case?

You ought to consider also his opportunity to know the facts about which he testified and the probability or improbability of what he said. How does his testimony add up when considered with all of the other evidence and testimony and exhibits? How far does his story check out with the other evidence? Are there any inconsistencies in his testimony, and if so, how important are they?

earlier occasion, and if so, how important are those inconsistent statements? And in determinging whether he had made some inconsistent statement on a prior occasion, you should consider not only what he said on a prior occasion, but what he failed to say.

Now, the defendant John Lynch did not take the stand. A defendant is not required to take the stand and

to sustain in his case. He has denied the charges made against him by his plea of not guilty, and under our laws he is presumed to be innocent. That fact that he did not testify cannot be taken into consideration by you in any manner. You may not permit that fact to weigh in the slightest degree against the defendant Lynch.

Nor should that fact enter into your discussions in any way.

Now, the defendant McNally, on the other hand, did testify as a witness, and as with Lynch, he was not required by law to do so, and his appearance as a witness was entirely voluntary on his part. If he had not testified, his failure to do so could not have been considered by you in any manner in determining his guilt or innocence. But having testified the law requires that his testimony be judged and appraised by the same standards applied to the testimony of any other witness, giving consideration, of course, to his background, to his personality, and to his natural interest in the outcome of this trial.

If you find that any witness has deliberately and willfully lied with respect to any material fact in his testimony offered at this trial, you may follow either one of two courses:

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You may accept as much of the witness, testimony as you believe or you may, if you wish, reject his entire testimony.

Now, before discussing the crimes charged here

I want to remind you, as I did at the time that you were
selected to serve on this jury, that an indictment is
merely an accusation of a crime. It is not evidence of the
truth of the charges made and you are to draw no inferences
of guilt whatever from the mere fact that a defendant has been
indicted.

An indictment means simply that the defendant has been accused. Each of these defendants has denied the charge made here by a plea of not guilty and the defendant McNally denied it on the stand.

The defendant has no burden of proof to sustain in this case. He is under no obligation to produce any witnesses. Each of these defendants is presumed to be innocent, and this presumption of innocence continues throughout the trial and during the deliberations of the jury. This presumption of innocence is overcome when and only when the government establishes the guilt of the defendants beyond a reasonable doubt.

Now, what do I mean by reasonable doubt? As the phrase implies, a reasonable doubt is a doubt that is based

upon reason, a reason which appears in the evidence or in the lack of evidence. It is not some vague, speculative, imaginary doubt, nor a doubt based upon emotion, sympathy or prejudice, or upon what some juror may regard as an unpleasant duty. The government is not required to prove a defendant's guilt beyond every possible doubt nor to an absolute or mathematical certainty, because such measure of proof is usually impossible in imperfect human affairs.

You should review all of the evidence as you remember it. Sift out what you believe, discuss it, analyze it, weigh and compare your view of the evidence with that of your fellow jurors. If that process produces a solemn belief or conviction in your mind such as you would be willing to act upon without hesitation if this were an important matter of your own, then you may say that you have been convinced beyond a reasonable doubt.

On the other hand, if your mind is wavering or so uncertain that you would hesitate before acting if this were an important matter of your own, then you have not been convinced beyond a reasonable doubt and you must render a verdict of not guilty.

We will turn now to the specific charges involved in this case. The indictment here, and I will send in a copy of it to you so that you will have it before you during your

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deliberations, the indictment contains four counts.

Count 1 and 3 each cahrge the defendants John
Lynch and Kenneth McNally with theft from an interstate
shipment of freight and express.

Counts 2 and 4 each charge the defendant Lynch with possession of a firearm during the commission of a felony.

Now, you must consider each count and each defendant separately.

In determining guilt or innocence you must bear in mind that guilt is personal. The guilt or innocence of each defendant on trial must be determined separately with respect to that defendant, and solely on the basis of the evidence presented against that defendant or on the lack of evidence.

With respect to Counts 1 and 3, both defendants are charged with violating a federal law making it a crime for anyone to steal or unlawfully take and carry away from any motor truck or other vehicle with intent to convert to his own use any goods moving as or which are or constitute an interstate shipment of freight and express.

In order to convict the defendants on Counts 1 and 3, the government must prove to your satisfaction beyond a reasonable doubt, each of the following four elements:

1) That on or about the date specified in the

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count which you are considering, the defendant unlawfully, willfully and knowingly stole or unlawfully took and carried away from a motor truck and trailer, goods.

- 2) That the defendant intended to convert the goods to his own use.
- 3) That the goods were part of an interstate shipment of freight and express.
  - 4) That the value of the goods exceded \$100.

To steal, take or carry away goods means that the defendant at some point had possession or took possession of the goods against the right of the owner of the goods. Goods are in a defendant's possession if he has them on his person, in his power, or under his control in any way.

The defendant, however, must have taken the goods willfully and knowingly. Now, knowingly does not mean that the defendant must know that his conduct violates the law. It simply means that he must know what he is doing and that he does it freely, voluntarily and as a matter of his own free choice; that he does it intentionally and not because of mistake or for carelessness or for any other reason.

Willfully simply means that a defendant acted knowingly, intentionally, or on purpose.

Element 2, is that the defendant intended to convert the goods to his own use. And intention to convert

means that the defendant intended to deprive those who were entitled to possess the goods of their rightful possession.

Now, now do you determine whether the defendant had the requisite criminal intent to take these goods, this meat, and convert it to his own use? This determination depends upon the defendant's state of mind and it is not possible to look into a man's mind to see what is going on inside his head. The only way we have of determining what a man is thinking or what is going on in his brain, is to draw conclusions from what he does, from the way he acts, from what he says, and from his manner of acting. And we determine from all of the facts and circumstances whether he has the requisite knowledge and specific intent to commit the crime.

Here to nijack the truck and steal the meat.

Direct proof is not necessary. Knowledge and intent may be inferred from the surrounding circumstances.

Now, the third element is that the goods were moving as and were part of and constituted an interstate shipment of freight. It is not necessary that the government prove that the defendant knew that the goods were part of an interstate shipment. It is enough that the government prove beyond a reasonable doubt that the goods were in fact moving in interstate commerce.

When goods are intended to be snipped in

ment as soon as the shipper places them in the possession of a carrier, such as a truck, for shipment across a state line.

Once the goods are placed with a carrier for such snipment they are part of and constitute an interstate shipment of freight even though they never actually crossa state line.

Now, the fourth element concerns the value of the goods. The parties have agreed that the goods in question here on both Counts 1 and 3, were worth more than \$100.

Nevertheless, it is for you to decide whether the meat in these shipments on each of these occasions was reasonably worth a reasonable value of more than \$100. This simply means the cost price, either wholesale or retail, whichever is greater.

As to Counts 1 and 3, it is not necessary for the government to snow that the defendant whom you are considering actually committed the crime of nijacking the trucks himself, and you will recall the testimony to the effect that it was Lynch who climbed into the truck with a gun and that it was McNally who drove the other car.

The government's theory here is that McNally aided and abetted the hijacking of the truck by Lynch. Now, the law provides that a person who aids and abets, helps

another person to commit a crime is just as guilty of the crime as if he committed it himself.

Accordingly, you may find the defendant whom you are considering guilty of the crime charged in the count which you are considering if you find beyond a reasonable doubt that the defendant aided or abetted some other person in the commission of the crime charged.

Now, with respect to Counts 1 and 3, the government contends that each of the defendants now on trial aided and abetted each other in committing the crime of theft from an interstate shipment. Before you can convict a defendant for aiding and abetting, however, you must find that the crime was committed by someone and that the defendant whom you are considering consciously associated nimself with a criminal venture or common plan with an intent that his conduct would help him succeed.

You must be convinced beyond a reasonable doubt that he was doing something to aid the crime or to forward the crime of the other person. In other words, that he was a conscious, knowing participant in the crime with a stake in its success rather than a mere witness, spectator or bystander on the scene of a crime committed by another.

If you find that the alleged hijackings, as charged in Counts 1 and 3, did occur, the key question for

you to decide in this case is who were the hijackers. There is not much dispute in the case here that these trucks were hijacked. They were hijacked by someone. They were in interstate commerce. The goods were valued at more than one hundred dollars. The key question for you is, were these defendants the hijackers?

Now, the defendants contend that this is the case either of deliberate falsification of identity, or, at best, a mistaken identification, and that is the key issue.

As to Count 1, you will recall the testimony of

Andrew Fillmore to the effect that at or about 11 p.m. on

June 26, 1974, Lynch, armed with a gun, climbed onto their

truck when it was stopped at a red light at the Hunts Point

Avenue and Bruckner Boulevard intersection up in the Bronx;

that Lynch got in the cab. He ordered them to follow a yellow

Cadillac driven by McNally.

They followed it for a snort distance. Lynch ordered them to stop and get out of the truck and climb into the Cadillac with Lynch and McNally and compelled them to remain with them until they were released after riding around town, stopping at the bar, and so on, until the following morning at 7:30 at Lincoln Center subway entrance.

You will also recall the testimony of McNally to the effect that he was not the driver of the Cadillac and

Now, McNally's testimony sets up what is known as a defense of alibi. Now here you must keep carefully in mind that neither the defendant McNally nor the defendant Lynch has any burden of proof to sustain in this case, and you cannot convict either of them unless the government proves beyond a reasonable doubt that the defendant whom you are considering was present at the time and place where the alleged crime was committed and that it was that defendant

tnat ne was not present at the time and place when the truck

was allegedly hijacked, but he was attending a birthday party

for Grace Savero in Astoria, Queens.

who committed that crime.

Now, if after considering all of the evidence you have a reasonable doubt whether the defendant you are considering was present at the time and place of the alleged events, you must find that defendant not guilty.

So, was Lynch the man who climbed into the truck and was McNally in fact the driver of the yellow Cadillac? In other words, were these defendants the two men who hijacked the truck on June 26, 1974? The key question for you to decide on Count 3 was whether Lynch was the man who climbed onto the truck and whether McNally was in fact the driver of the red Chevy Nova. Again, whether these defendants were

the two men who hijacked the truck, a different truck on September 5, 1974?

As to Count 1 the government has offered the testimony of Andrews and Fillmore. These witnesses were positive that Lynch was the man who entered the truck with a gun and that McNally was the driver of the yellow Cadillac.

mony of Thomas and Jermott. These witnesses were positive that

Lynch was the gunman who entered their truck on September 5,

1974, but neither one of them was sure that McNally was the

driver of the red Chevy Nova. That testimony should be

considered by you, but it does not relieve you of your duty to

consider the witnesses' testimony carefully and to reject the identification if you find that it is not reliable.

eyewitness obviously depends upon all of the surrounding circumstances. You should look into the relationships of the witness and the person he was observing at the time of the observation. Did the witness know the person committing the criminal act or were they strangers at that time? Whis the witness a victim of the crime or was he a mere bystander? Was the attention of the witness at the time of the viewing focused on the gunman and the driver of the Cadillac or was the witness preoccupied or distracted?

You should also consider the opportunity of the witness to observe the hijackers during and after the incident in determining the reliability of the witness' identification. You should therefore consider all of the circumstances shown in the evidence which bear on the ability, opportunity and motivation of the witness to make a careful observation and to form and retain a definite image of the hijackers in his mind.

You should thus consider such factors as the condition of the witness' eyesight, his range of vision, the lighting conditions, whether or not his view was clear or obstructed, the age of the witness, his mental faculties and his emotional state at the time of his observation.

You should also consider the length of time that the witness was able to observe the hijackers, the distance between the hijackers and the witness at the time of the observation, any distinctive physical characteristics, facial expressions, mannerisms of the hijackers and their attire and his description, if any, or lack of it, of their general appearance.

As to Count 1, there is evidence that on

November 12, 1974, at FBI Headquarters Andrews and Fillmore

both viewed line-ups which included the defendant Lynch and
that both identified Lynch as the man who climbed into the

cab of the truck with a gun.

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There was also testimony that on August 5, 1974, at FBI Headquarters, Fillmore was shown a photograph -a group of photographs and selected a picture of mother man, Santora, as the gunman who entered the truck.

Fillmore also testified that on August 9, 1974 a gunman attempted to enter his truck again, and that he recognized that gunman as the same man who climbed on his truck back on June 26th, 1974. Following this attempt, Fillmore again viewed a group of photographs, he said, at his own request, at FBI Headquarters and this time he selected a picture of Lynch as the gunman at the June 26th hijacking.

Still later, on November 12, 1974, at FBI Headquarters, Fillmore viewed a line-up which included the defendant Lynch and he identified Lynch as the gunman in the June 26th hijacking.

There is also evidence that Andrews selected McNally's picture from among a group of photographs shown to him by the New York City Police on June 27, 1974, the day after the June 26th hijacking, and that later on August 5, 1974, he again selected McNally's picture from another group of photographs shown to him by the FBI.

There is also evidence that still later, on October 30, 1974, at FBI Headquarters, Andrews and Fillmore

viewed line-ups which included McNally and that both identified McNally as the driver of the Cadillac on the June 26th hijacking.

As to Count 3 there is evidence that in November, 1974, at FBI Headquarters, Thomas viewed line-ups which included Lynch and McNally and that he identified Lynch as the gunman who entered his truck on September 6, 1974, but that he did not identify McNally as the driver of the Chevy Nova.

Jermott testified that, on November 12, 1974, at FBI Headquarters, he viewed a line-up which included

Lynch and that although he then recognized Lynch as the gunman he did not tell that or otherwise identify to the FBI at that time.

There is also evidence that on September 9, 1974, at FBI Headquarters, Thomas selected McNally's picture from among a group of photographs as a man who looked like the driver of the red Chevy Nova but said he could not be sure.

There is also evidence that Jermott selected

McNally's picture from a group of photographs and thereafter

on November 12, 1974, at FBI Headquarters, viewed a line-up

which included McNally and that although he recognized McNally

as the driver of the red Chevy Nova, he did not tell the FBI

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and failed to identify McNally at that time as the driver of the red Chevy Nova.

Now, you should consider all of the circumstances surrounding these pretrial identification procedures in order to determine the reliability of the witnesses in court identification of these defendants as the hijackers or the lack of their in court identification of these defendants as hijackers.

Thus, as to the photographic and line-up identification procedures some of the factors which you should consider are the lapse of time between the witnesses' initial observation of the hijackers at the scene of the crime, and the time when he viewed the photographs in the line-up.

You should consider the duration of the viewing session; the witness' physical and emotional state at those times; the identity and number of persons attending the viewing sessions with the witness; whether the witness was giving his own retained image or whether it was something he garnered from talking with others; the number of photographs shown to the witness, and whether the defendant's picture was among them; the number of persons in the line-up and whether they were all of a similar age, weight, height, coloring, race, dress and overall general appearance; whether the witness was able to identify the defendants as the hijackers

at the time he viewed the pictures and the line-ups, and if so, whether the witness' identifications were quick and certain or hesitant and uncertain; whether the witness was able to identify the defendants as the hijackers at the times prior to the viewing sessions or to give a reasonably accurate description; whether any description which the witness gave before viewing any photographs or line-up matched the actual appearance of the defendant; the circumstances of the witness' in-court identification of the defendants as the hijackers may also be considered by you in determining the reliability of the witness' identification.

the initial observation of the hijackers by the witness at the scene of the crime and this trial and his intervening observations of them from photographs or line-ups.

You should also consider the fact that the witness is observing these defendants at counsel table at this trial. The testimony of the witnesses on direct and cross examination as to the basis for his identification.

You should consider whether the witness was able to identify the defendants on a previous occasion or whether he made a misidentification on a previous occasion.

You should therefore decide, and this is the key question, whether the witness is able to identify the

defendants here in court as the hijackers because of the image he formed from his independent observation of the hijackers at the scene of the crime or whether his identification here is the resultof identification procedures which were suggestive and so suggestive as to give rise of a very substantial likelihood of mistaken identification.

each defendant and each count separately. If you find that the government has failed to prove beyond a reasonable doubt each of the four elements of the crime charged in the court which you are considering and that the defendant whom you are considering aided and abetted another in the commission of a crime charged in that count and that this defendant whom you are considering was the person who committed that crime, you should acquit that defendant on that count. That is prefaced if the government failed to do these things.

on the other hand, if you find that the government has proved beyond a reasonable doubt all four of the elements of the crime charged in the count which you are considering, or that the defendant whom you are considering aided and abetted another in the commission of the crime charged in that count, and that that defendant was indeed the hijacker on the crime charged in that count, then you should convict that defendant on that count.

We will now turn to Counts 2 and 4 for your consideration.

As I told you earlier, only the defendant John
Lynch is charged in each of these counts. With respect to
Counts 2 and 4, the defendant Lynch is charged with violating
a federal law making it a crime for anyone to carry a firearm
unlawfully during the commission of any felony for which he
may be prosecuted in a court of the United States.

Count 2 of the indictment charges a crime, therefore, which is predicated or based on the commission by the defendant Lynch of the other crime.

In short, the hijacking of the property charged in Count 1 of the indictment.

Similarly, Count 4 of the indictment charges a crim which is predicated or based on the commission by the defendant Lynch of the hijacking crime charged in Count 3.

Therefore, before the defendant Lynch can be convicted on the crime charged in Count 2, you must find, among other elements which I will refer to later, that the government has proved to your satisfaction, beyond a reasonable doubt, that Lynch committed the crime charged in Count 1.

Similarly, before the defendant Lynch can be convicted of the crime charged in Count 4, you must find, among other elements which I will refer to later, that the

Therefore, if you find that the government has failed to prove to your satisfaction beyond a reasonable doubt that Lynch committed the crime charged in Count 1, drop your deliberations on Count 2. You need go no further.

government has proved to your satisfaction beyond a reason-

able doubt, that Lynch committed the crime charged in Count 3.

Similarly, if you find that the government has failed to prove to your satisfaction, beyond a reasonable doubt, that Lynch committed the crime charged in Count 3, drop your deliberations on Count 4.

If you find, however, that the government has proved to your satisfaction beyond a reasonable doubt that Lynch did commit the crime charged in Count 1, before you can convict him on Count 2, the government must also prove to your satisfaction beyond a reasonable doubt each of the following additional elements:

- 1) That Lynch carried a firearm with criminal intent.
- 2) That he did so during the commission of the crime charged in Count 1.

Similarly, if you find the government has proved to your satisfaction, beyond a reasonable doubt, that Lynch did commit the crime charged in Count 3, then before you can convict him on Count 4, the government must also prove to

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your satisfaction beyond a reasonable doubt, that Lynch carried a firearm with a criminal intent; and two, that he did so during the commission of the crime charged in Count 3.

Now, in this regard a firearm is any weapon capable of expelling a projectile or a bullet by the action of an explosive. And carrying a firearm with criminal intent simply means that the defendant knew that he was carrying a firearm, and did so deliberately during the commission of the predicate or basic crime. In this connection you will recall my earlier instructions on the subject of knowledge, willfull ness, criminal intent and apply them here.

Consider each of Counts 2 and 4 separately. If you find as to the count which you are considering that the government has failed to prove to your satisfaction, beyond a reasonable doubt, each and every element of the crime as I have defined them, then you should acquit the defendant Lynch on that count.

On the other hand, if you find as to the count which you are considering that the government has proved to your satisfaction beyond a reasonable doubt all of the elements of the crime as I have defined them, then you should convict the defendant Lynch on that count.

Now, you are instructed that the question of

possible punishment of a defendant in the event of a conviction is no concern of yours and it should not in any sense enter into or influence your deliberations. The duty of imposing sentence in the event of a conviction rests exclusively upon the Court.

The function of the jury is to weigh the evidence in the case and determine the guilt or innocence of each defendant separately on each count solely upon the basis of that evidence.

Now, when you retire to the jury room, treat one another with consideration and respect, as I know you will. If differences of opinion arise, the discussion should be dignified, calm, intelligent. Your verdict must be based on the evidence and the law, the evidence which was presented in this case as you remember it and the law as I have given to you in this charge.

you are each entitled to your own opinion. No juror should acquiesce to a verdict which is against his judgment. Nonetheless, I should point out that no one should enter a jury room with such pride of opinion, that no matter how persuasiver or convincing the arguments of his fellow jurors he would refuse to change his mind. Discussion and deliberation are at the very heart of our democratic jury process and your deliberations should be approached in that

spirit. Talk out your differences. Each of you should, in effect, decide the case for himself or herself after thoroughly viewing the evidence and frankly discussing it with your fellow jurors with an open mind and with a desire to reach a verdict.

There are twelve of you on this jury. The alternates will be excused before you retire to your deliberations. Any verdict must be the unanimous verdict of all of you and it must represent the honest conclusion of each of you.

I submit the case to you and have every confidence that you will fully measure up to the oath which you took as members of the jury to decide the issues submitted to you fairly and impartially and without fear or favor.

Now, members of the jury, if you find that the government has failed to establish the guilt of the defendant whom you are considering, beyond a reasonable doubt, that defendant should be acquitted.

If, on the other hand, you find that the government has established the guilt of the defendant whom you are considering beyond a reasonable doubt, you should not hesitate because of sympathy or any other reason to render a verdict of guilty.

Your foreman then will return an oral verdict

in for you.

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in open court as to each defendant of guilty or not guilty on each count in which that defendant is named as a defendant.

Are there any exceptions, gentlemen?

MR. SIEGAL: No exceptions, no requests.

MR. GROSS: No exceptions, your Honor.

THE CLERK: Will the marshal come up, please?

(Marshal sworn.)

THE COURT: I think sandwiches have been sent

(Alternate jurors excused.)

(Jury commenced its deliberations at 1:35 p.m.)

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(3 p.m.)

(In open court - jury not present.)

THE COURT: I have a note from the jury:

"We would like, please, one, court transcripts of testimony;

"Two, pictures (all)."

MR. SIEGAL: I didn't hear you, Judge.

THE COURT: "One, court transcripts of testimony;

"Two, pictures (all)."

Obviously as to the second, there is no problem. As to the first there certainly is, and I do not propose to hand them the whole transcript. I am going, rather, to ask them to focus on what they want and send me another note.

MR. SIEGAL: Of course, your Honor.

MR. PEDOWITZ: Your Honor, do you want the pictures at this time?

THE COURT: I will tell them we will send them in. Get all the pictures together.

(Jury present.)

THE COURT: I have your note. You will remember in my instructions I told you that it was your memory of the evidence --

MR. SIEGAL: Could I interrupt, Judge? I think

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memory.

somebody is missing.

I have your note. You will remember in my instructions I told you that it was your memory of the evidence that controls, and you should try, first, to exhaust your memory. If you can't remember it, maybe one of your fellow jurors can, and it will stimulate your own

THE COURT: Here she is now.

If after that process you want some part of the testimony read, if you will send me a note that focuses on what you want, I will be happy to have the court reporter read it to you so that you all hear it at the same time.

And in the event there is some stenographic error as frequently occurs, I am here to attempt to correct it.

So, we do not send the transcripts of an entire trial to a jury.

On the second request, pictures, all the pictures, we have no problem. We will send those right in to you.

So if you still want some of the testimony, focus on what you want, tell me, and bear in mind you will have to have it both on direct and cross and on rebuttal so that you get the complete picture as to anything that you want.

All right.

1 rdlt 393  2 (Jury resumes deliberations at 3:20 p.m.)  3 THE COURT: Mark the note Court Exhibit 3.  4 (Court's Exhibit 3 marked.)	
THE COURT: Mark the note Court Exhibit 3.	
THE COURT: MAIR the note Court Exhibit 5.	
4 (Court's Exhibit 3 marked.)	
5 (In open court.)	
THE COURT: Let the record show that I am	
showing Court Exhibit 4 to the attorneys.	
8 (Court Exhibit 4 marked.)	
THE COURT: Have you agreed on the spots?	
MR. SIEGAL: Yes, we have, your Honor.	
MR. GROSS: Your Honor, may I sit with the	
reporter? I have given him my copy of the transcript to	read
and I want to go over it with him while he does.	
THE COURT: All right.	
(Jury present.)	
THE COURT: We have located what you want.	
Read it, please.	
(Reporter read from the record the following	<b>s</b> :
Page 131, lines 18-19.	
Page 101, lines 15-19.	
Page 151, lines 15-19.	
Page 152, line: 4.	
Page 156, line 14.)	
(Jury resumes deliberations at 4 p.m.)	
THE COURT: Please stay close by. We are	
207	

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1	rdlt 394
2	losing quite a lot of time here on the production end of
3	the line.
4	(Jury verdict at 4:30 p.m.)
5	(In open court - jury present.)
6	THE CLERK: Jurors please answer present as
7	your name is called.
8	(Jury roll is called, all present.)
9	THE CLERK: Madam Forelady, has the jury
10	agreed upon a verdict?
11	THE FORELADY: The jury has agreed upon a
12	verdict.
13	We find Lynch guilty on all four counts.
14	We found McNally guilty on the first count and
15	not guilty on the third count.
16	THE CLERK: Ladies and gentlemen of the jury,
17	listen to your verdict as it now stands recorded:
18	You say you find the defendant McNally guilty
19	on Count 1, not guilty on Count 3.
20	You say you find the defendant John Lynch guilt
21	on Counts 1, 2, 3 and 4, and so say you all?
22	(All jurors indicate in the affirmative.)
23	THE COURT: I want to thank you very much for
24	the very careful attention that I know you gave to this case
25	I never comment on what I would do if I were on a jury. As 208

verdict upon the ground that it is contrary to the law and

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the facts in this case.

to you renewing the motions, if you see fit, ten days before the sentence date. The reason for that is that if there is anything that might throw us off on a sentence schedule,

THE COURT: Denied. That is without prejudice

I would like to know about it ten days ahead of time.

Do you have any other motions?

MR. SIEGAL: Not at this second. Are you going to fix a time for sentence?

THE COURT: How is Tuesday, May oth, at 10 o'clock?

MR. SIEGAL: As good as any other date.

THE COURT: Now, what about the bail situation?

MR. SIEGAL: That's what I wanted to ask at this time. Now, at this time where there is no problem about my friend here getting drunk and stopping the trial, I respectfully ask your Honor to reinstate the bail of McNally and continue the bail up to the time of sentence. There has never been any problem at any time about the appearances of these two defendants in court, and I know there won't be any problem. There isn't any question about that.

It is just unfortunate that the Easter holiday came along and the trial came along at the same time and the anxiety and a couple of extra drinks that night caused the

situation where he came in about an hour, hour and a half late.

Outside of that, he has never been late, always has been here. He has his roots here, his family here, he has his family's property up for collateral. If he made the wrong move he would have no house, no nothing. The same with the other fellow. No question about there being here.

Never was, and never will be.

MR. GROSS: Your Monor, the jury has found that both of these men were armed hijackers. They now face what the government hopes will be strong sentences. In light of the fact that they are a danger because are and may continue to be armed hijackers and in light of the fact that they face a strong sentence, we would request that they be remanded.

THE COURT: What is the current bail?

MR. SIEGAL: 50 and 5 on one, and 25,000.

MR. GROSS: Those are probably personal recognizance bonds with some cash surety set for them, your Honor.

THE COURT: What is their criminal records? I take it Mr. McNally has no serious criminal records?

MR. SIEGAL: None.

MR. GROSS: An arrest, but no conviction.

Mr. Lynch has a conviction for possessing a irearm. The facts of that -- I have the judgment of

conviction. The facts would show that he was arrested in a van out at Kennedy Airport with some other men and in the van were masks and burglar's tools. He was convicted of possessing a firearm.

He also was convicted of trying to bribe a policeman in New Jersey.

MR. SIEGAL: Arising out of a speeding ticket.

I don't see any danger to anybody, not in this case, at all.

MR. GROSS: The other difficulty, your Honor, is during the course of the trial we disclosed the name of a possible government witness in another trial who has identified Mr. Lynch in a line-up, and I just don't see why that person whould face any risk from a man who is convicted of armed hijacking.

THE COURT: I don't either. The jucy has found both of these men guilty of armed hijacking. The testimony of the witnesses was clear that lives were threatened, their heads to be blown off.

One of the witnesses plainly, it seems to me, had been intimidated to the point where he <u>refused</u> to tell the FBI that he could identify the defendant, even though he did recognize the defendant, even though he did recognize him.

I think they are a danger to the community.

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I think in addition there is no substantial question on appeal. The defendants had a great advantage of an excellent defense that fully exploited every conceivable point that they could have made.

of no rulings that could possibly amount to error or plaines error. So that I think that an appeal in these circumstances would be frivolous.

while normally the Court would be inclined to grant bail pending sentence, it is not, not in these circumstances, because primarily I find both defendants on the strength of the evidence here a danger to the community and perhaps even to the very lives of these witnesses.

If Mr. Gross' representation is so, it may well expose others as well to danger.

I want to make clear that I am not doing this simply because Mr. McNally tied one on the first morning of the trial. While that was not to be condoned, or commended, it would not be an adequate reason for denying bail at this stage. Just as his absence at that time is not the controlling reason. So also his appearance at other times when needed and Mr. Lynch's appearance at all other times as needed is not the primary reason for bail, particularly following a jury's verdict finding both me guilty of this

very serious crime.

Bail denied. Defendants are remanded.

A presentence report will be ordered.

Jel. I Lynch wallach

STATE OF NEW YORK COUNTY OF RICHMOND )

ROBERT BAILEY, being duly swore, deposes and says, that deposent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten island, N.Y. 10302. That on the / 5 day of and served the within appendig upon M. & attorn

attonrye(s) for appelled

in this action, at

Foley of NYC

the address(es) designated by said attorney(s) for that purpose by depositing 3 true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office

department within the State of New York.

ROBERT BAILEY

Sworn to before me, this

Notary Public, State of New York

No. 43-0132945

Qualified in Richmond County Commission Expires March 30, 1976